1.-446

Mr Justice Davis

Submitted

17 Dec 75

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 588.

THE UNITED STATES, APPELLANTS,

vs.

ARCHIBALD McKEE AND OTHERS.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 14, 1875.

A. Miller

SUPREME COURT OF THE UNITED STATES.

No. 588.

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1 United States Court of Claims. December term, A. D. 1873.

ARCHIBALD MCKEE, AMANDA TURNER AND John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee
vs.
THE UNITED STATES.
No. 7912.

Petition.—Filed October 31, 1873.

To the honorable the chief-justice and judges of the Court of Claims:

Your petitioners, Archibald McKee, Amanda Turner and John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee, respectfully represent—

1. That all of your petitioners are citizens of the United States; that the said Archibald McKee is a resident of Vincennes, in the State of Indiana; that the said Amanda and John T. Turner are residents of Sullivan County, in the State of Indiana; and that the said Archibald McKee, jr., Shannon McKee, Josiah McKee, and Wesley McKee are residents of Jasper County, in the State of Texas.

2 2. That in the years 1778 and 1779 the State of Virginia was engaged in prosecuting what was known as the "Illinois campaign," with a body of troops under the command of General George Rogers Clarke, who was authorized to subsist them, and for that purpose to draw for money, by bills of exchange or otherwise, upon one O. Pollock, who was then the commercial and financial agent of said State at the city of New Orleans.

3. That at that time one Colonel Francis Vigo, under whom your petitioners claim, resided at Saint Louis, which was then a Spanish port, and was engaged in carrying on business as a merchant and trader with the Indians; that when said troops, under the command of General Clarke, reached what afterward became part of the Territory and State of Illinois, the soldiers were in a state of almost entire destitution, being without clothing or means of subsistence; and to relieve their wants General Clarke was compelled, as he was without money, either to borrow it upon the credit of the State of Virginia, or to procure supplies by paying for the same with bills of exchange drawn upon the said Pollock.

4. That while the army was in this suffering condition, General Clarke called upon the said Francis Vigo to assist him by the advance of money necessary for his purpose; that the said Vigo was then a man of large property and favorable to the cause of Virginia; that the said Vigo accordingly aided the said General Clarke in making the necessary purchases of supplies for his troops to the amount of about twelve thousand dollars, and advanced to him the money to make the payments therefor; and that General Clarke, being entirely without money, met these advances of the said Vigo by drawing four bills of exchange, in his capacity of representative of Virginia, upon the said Pollock, at New Or-

3 leans, as the said commercial and financial agent of said State, which said bills of exchange were as follows:

One for $921, dated December 18, 1778, payable at thirty days' sight;

One for $1,452, dated January 30, 1779, payable at thirty days sight;

One for $298, dated June 17, 1779, pay at sight; and
One for $8,716.40, dated December 4, 1779.

5. That upon the presentation of the said bills of exchange they were not paid by the said Pollock, but were protested for non-payment on account of the want of funds in his hands; that the said Vigo, being thereby injured in his business by the withdrawal of so large a sum of money therefrom, was then compelled to raise money on the said bills of exchange; that he accordingly sold the three first-named bills for sums greatly below what they called for, and they were subsequently paid to the holders thereof; but the last of the above-named bills, to wit, that for the sum of eight thousand seven hundred and sixteen dollars and forty cents, was not paid by said Pollock, nor was any part of it paid; that neither the State of Virginia nor the United States, nor any person on behalf of them or either of them, has since paid the same or any part thereof to the said Vigo, or to his heirs or legal representatives; and that said last-named bill was never transferred nor assigned by the said Francis Vigo during his life-time, and after his death descended to and became the property of his heirs and legal representatives, and belongs to them under his will, as will be hereinafter stated.

6. That in the year 1845 this claim, having been repeatedly before that time brought to the attention of the authorities of the State
4 of Virginia, was carefully and thoroughly examined by John H. Smith, commissioner of revolutionary claims for that State, who, on the 16th day of December, in that year, made a report thereon, showing that there was then due to the said Vigo, on account of the said bill of exchange, the sum of thirty-two thousand six hundred and fifty-four dollars and eighty-five cents, as from the said report, a copy of which is hereto attached, marked "A," will fully and at large appear.

7. That by the accounts of the said General Clarke with said State of Virginia, extending from March, 1778, to October, 1781, it appears that the said Clarke credits the said State of Virginia with the proceeds of all the said drafts or bills of exchange; that the credit of said bill for $8,716.40 is in the words and figures, to wit: "1778. December 4. By my draft of this date on Oliver Pollock, payable to Vigo, $8,716.40;" that by the account of said Oliver Pollock with the said State of Virginia all the bills paid by him, from the year 1776 to 1781, are shown and charged against the said State; and that although it appears from said accounts that the smaller bills above described were paid by said Pollock, yet no such payment was made of said bill for the said sum of $8,716.40 by the said Pollock, nor has the amount thereof ever been charged to the said State of Virginia.

8. That the said General George Rogers Clarke was fully and duly authorized by the said State of Virginia to draw the bills of exchange aforesaid on the said Pollock; that both he and the said Pollock were the authorized agents of the said State of Virginia; that the amounts of the said bills or drafts were credited to and received by the said State, and were duly and faithfully applied by said General Clarke to meet the expenses of said military campaign; and that the amount of said bill of exchange for the sum of $8,716.40 has never been
5 embraced in any settlement between the State of Virginia and the United States, nor has said State ever received in any form credit for, or the benefit of, said bill of exchange or draft, or any part thereof.

9. That it is the duty of the United States to pay the amount of said claim of your petitioners, in pursuance of the acts of Congress of Oc-

tober 10, 1780, and September 17, 1783; the cession by the State of Virginia of the territory northwest of the Ohio River; the act of Congress of March 1, 1784, and other acts of Congress passed since that date, to all of which your petitioners refer.

10. Your petitioners further represent that the said Colonel Francis Vigo departed this life on the 22d day of March, 1836, aged nearly one hundred years, having, previous to his death, executed his last will and testament, which bears date the 9th day of December, 1834, and was duly admitted to probate on the 5th day of April, 1836; that by his said last will and testament the said Francis Vigo devised to his nephew, Francis Vigo McKee, after the payment of his just debts, all his personal and real estate of which he died possessed, or which belonged to him in any way, either in remainder or reversion, to have and to hold to him and his heirs forever, except as follows:

(*a*) All the personal property in his house at the time of his decease, which was jointly devised to his nephews, the said Francis Vigo McKee and Archibald McKee.

(*b*) To his said nephew, Archibald McKee, the sum of five hundred dollars, payable out of his said claim against the State of Virginia, in case of its collection.

(*c*) A wish and request, in case of the payment of his said claim against the State of Virginia, that his executors, or some one of them, shall pay out of said claim to the county of Vigo, in the State of Indiana, which was named after the said Colonel Francis Vigo, the
6 sum of five hundred dollars, "to be laid out by the commissioners of said county in the purchase of a bell for the court-house of said county, on which is to be inscribed 'presented by Francis Vigo,'" as from the said will, a certified copy of which is hereto attached and made a part hereof, marked "B," will fully appear.

11. That previous to the execution of said will the said Francis Vigo had entered into a written contract with John Law, Abner T. Ellis, and Luther H. Reed, attorneys at law, for the collection of his said claim against the State of Virginia; that in his said will the said Francis Vigo affirmed the said contract, and required his executors to carry the same into full effect; that the said Abner T. Ellis and Luther H. Reed have long since deceased; and that the said John Law, on the 21st day of August, 1873, surrendered all claims to said attorneyship, and relinquished his rights under said contract.

12. That the executors named in said will of the said Vigo, to wit, Albert Badolet, George W. Ewing, and the said Francis Vigo McKee, have long since deceased; that on the 29th of January, 1856, one Abraham Smith was appointed administrator of the estate of the said Francis Vigo, who acted in that capacity until the 9th day of August, 1869, when he departed this life; that no other administrator has been since appointed; and that the estate of the said Francis Vigo, excepting the said claim against the State of Virginia above described, has been settled and divided among his heirs, in pursuance of the said last will and testament.

13. That the said Archibald McKee, one of the nephews of the said Francis Vigo, and a legatee under said will, still survives, and is one of the claimants herein; that Francis Vigo McKee, the other nephew named in said will, and who is made residuary legatee therein,
7 departed this life on the 29th day of January, 1860, A. D., leaving issue as follows: Amanda McKee, intermarried with John T. Turner; Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee, all of whom are adults, and the heirs at law of the said

Francis Vigo McKee, and who are the other claimants named in this petition.

14. Your petitioners further represent that this action is brought in this court in pursuance of the act entitled "An act referring the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, to the Court of Claims for adjustment," approved June 8, 1872, which reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, late of Terre Haute, Indiana, for money and supplies furnished the troops under command of General George Rogers Clarke, in the year 1778, during the revolutionary war, be, and the same hereby is, referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations."

15. And that "the papers and official documents belonging" to said claim, and by said act referred to this court, to be used in making the adjustment and settlement provided for therein, are the following:

1. Copy of General George Rogers Clarke's accounts.
2. Extract from journal of western commissioners.
3. Traduction de la permission du General Knox de 1790.
4. Account of O. Pollock against the State of Virginia.
5. Commissioner's adjustment of the claim.
8 6. Letter of Auditor Heath, marked "B. 1."
7. Letter of Auditor Heath, marked "B. 3."
8. Copies of bills of exchange.
9. Statement of General Gratiot.
10. Certified copy of Vigo's will.
11. Copy of evidence on file in the office of the commissioner of revolutionary claims of the State of Virginia, consisting of—
    1. Memorial of Colonel Francis Vigo.
    2. Statement of Pierre Menard.
    3. Statement of John Badolet.
    4. Statement of Judge J. Burnet.
    5. Statement of Nathaniel Ewing.
    6. Statement of General W. H. Harrison.
    7. Letter of General George Rogers Clarke, August 1, 1811.
    8. Additional memorial of Vigo.
    9. Letter of Knox, Secretary of War, July 20, 1790.
    10. Letter from same, December 30, 1790.
    11. Letter from General Anthony Wayne, May 27, 1794.
    12. Letter from Vigo to Wayne, June 24, 1794.
    13. Letter from Wayne to Vigo, July 5, 1794.
    14. Letter from Wayne to Vigo, September 29, 1794.
    15. License from Wayne to Vigo, August 18, 1795.
    16. Order of General Harrison, May 26, 1805.
    17. Certificate of treasurer of Virginia, January 15, 1835.
    18. Certificate of auditor of Virginia, January 12, 1835.
    19. Letter of auditor of Virginia, January 15, 1835.
    20. Certificate of Commissioner Smith, February 20, 1835.

16. Your petitioners, therefore, represent that the said Archibald

9 McKee, as one of the legatees under the will of the said Francis Vigo, and the other claimants, as heirs at law of the said Francis Vigo McKee, the residary legatee under the said will, are the owners of the said bill of exchange, and that there is due to them from the United States the said sum of eight thousand seven hundred and sixteen dollars and forty cents, with interest thereon from the 20th day of March, 1779, at the rate of five per cent. per annum, making, in the aggregate, the sum of forty-nine thousand nine hundred and thirty-seven dollars and sixty-five cents, with accruing interest, in accordance with the law and uniform practice of the Government in like cases, for which amount they respectfully pray judgment.

W. PENN CLARKE,
Solicitor for Claimants.

THE STATE OF INDIANA,
County of Vigo, ss:

Toussaint C. Buntin, of lawful age, on oath, deposes and says that he is the attorney in fact of the claimants in the foregoing petition; that no assignment of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that the said claimants are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; that the facts stated in said petition are true; and that the said claimants, and each and every of them, have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, as he verily believes.

TOUSSAINT C. BUNTIN.

10 Subscribed and sworn to before me this 27th day of October, A. D. 1873.

MARTIN HALLINGER,
Clerk Vigo Circuit Court.

Post-office address of claimants:
Archibald McKee, Vincennes, Indiana; John T. and Amanda Turner, Sullivan County, Indiana; Archibald McKee, jr., Shannon McKee, Josiah McKee, and Wesley McKee, Jasper County, Texas.
Post-office address of solicitor:
W. Penn. Clarke, No. 525 Thirteenth street, Washington City.

EXHIBIT A.

Commissioner's adjustment of the claim.

OFFICE OF THE COMMISSIONER OF
REVOLUTIONARY CLAIMS FOR THE STATE OF VIRGINIA,
Richmond, December 16, 1835.

I have examined the claim of Francis Vigo, of Vincennes, and State of Indiana, for supplies furnished to the Illinois regiment in the fall of the year 1778, to the amount of eight thousand six hundred and sixteen dollars, evidenced by a set of bills of exchange drawn by George R. Clarke on Oliver Pollock, at New Orleans, for the said sum of $8,616, (which said bills have been lost or mislaid,) and which the said Vigo alleges remains unpaid to this day. I have examined also every public document within my reach which I believed would give informa-

tion respecting the transactions in which the claims of individuals against the State of Virginia for supplies furnished to the Illinois regiment originated, and especially respecting the claim of Colonel Vigo.

In this examination and investigation I have ascertained the following facts, to wit:

First. That Francis Vigo was the "Spanish merchant," as he has been called by way of honorable distinction, who was renowned for his integrity, liberality, and benevolence, as well as *from* his firm
11 friendship for and disinterested and efficient support of Virginia in the war of the Revolution.

Second. That, being the subject of a foreign power, he warmly espoused the cause of the Colonies against the mother country, and made large sacrifices in supporting the western troops of Virginia.

Third. That bills of exchange were drawn by General Clarke, in the year 1778, upon Oliver Pollock, at New Orleans, in favor of Francis Vigo, for upward of $10,000, for supplies furnished by him to the Illinois regiment in that year. That these bills were protested by Mr. Pollock (who was the agent of the State) for the "want of funds." That some of them were sold by M. Vigo and afterward paid by Virginia; that one, amounting to $298, was paid by the said Pollock to the said Vigo; that the bill for $8,616 was one of them which was not parted with by M. Vigo, but remained in his possession (that is to say, the second of the set remained in his possession, the set consisting of Nos. 1 and 2, and the first having been lost) until he suffered with a long and severe illness, commencing 1802 and continuing for several years; that during this illness he handed over the said bill for $8,616 to Judge Jacob Burnet, of Ohio, to obtain something, if possible, from Virginia upon it. (See statements of Francis Vigo, Pierre Menard, Jacob Burnet, all on oath; and also, as proof of the credit which should be given to the statements of the said Vigo, see the affidavits of John Badolet and Nathaniel Ewing, and statement of General Harrison, and letters from Generals Wayne, Clarke, and Knox, &c., &c.)

Fourth. That the said bill of $8,616 was drawn for supplies actually furnished to the Illinois regiment under the command of General G. R. Clarke by the said Francis Vigo. (See the memorial of Francis Vigo, which has been sworn to, and the affidavits of Pierre Menard and J. Badolet.)

Fifth. That this set of exchange (both first and second) have been lost. (See here also Francis Vigo's statement on oath, and the affidavits of Jacob Burnet and Nathaniel Ewing.)

Sixth. That the said amount of $8,616 remains at this day unsatisfied and due to the said Francis Vigo. (See Vigo's statement on oath, Pierre Menard's affidavit, and the affidavits of John Badolet and Nathaniel Ewing; also certificates of the auditor and treasurer of Virginia.)

Seventh. That all General Clarke's bills on Pollock at New Orleans were for specie. (See General Clarke's certificate, Journal of the House of Delegates, May session, 1783, page 73.)

Eighth. That the smaller bills which were drawn in the latter
12 part of the year 1778, by General Clarke, upon Oliver Pollock, in favor of Francis Vigo, and which he says in his memorial were parted with by him and afterward paid by Virginia, are proved by the Illinois documents and paper now in my possession to have been paid by Virginia. But these documents and papers furnish no proof whatever of the payment of the said larger bill of $8,616, the amount of which is now claimed by Francis Vigo.

In conformity with the foregoing facts, which are set forth in pages 1, 2, and 3 of this paper, I have adjusted the claim. It gives me pleasure to be able to make a favorable adjustment, and to ascertain the sum of money due from the State of Virginia to a man who has rendered the most important services to his adopted country, and who, if his neighbors, who are among the most distinguished men in the part of the United States in which he resides, are to be believed, is one of the most upright and honorable of men.

STATEMENT.

		Dr.
	The State of Virginia to Francis Vigo,	
*1778.	To advances made to General Clarke for the use of the Illinois regiment under the command of said Clarke	$8,616 00
	To interest on the same, at 5 per cent. per annum, from March 20, 1779, to January 10, 1835	24,038 85
	Total	32,654 85

After having made a satisfactory examination of the evidence touching this claim, I have adjusted it according to the above statement, and have found a sum of money due to the said Francis Vigo, of principal and interest, amounting to thirty two thousand six hundred and fifty-four dollars and eighty-five cents.

JOHN H. SMITH,
Commissioner, &c.

EXHIBIT B.

Copy of Vigo's will.

In the name of God, amen! I, Francis Vigo, of the county of Knox, and State of Indiana, being weak in body, but of sound mind, memory, and understanding, and considering the certainty of death and
13 the uncertainty of the time thereof, and to the end that I may be the better prepared to leave this world whenever it shall please God to call me hence, do make and publish this my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made.

And first and principally, I commit my soul into the hands of my Creator, perfectly satisfied with the disposition he may make of it; my body to be committed to the earth, to be interred as my executors, hereinafter named, shall deem most fit and advisable.

I do hereby appoint and constitute Albert Badolet, esq., George W. Ewing, esq., and my dearly-beloved nephew Francis Vigo McKee and the survivors and survivor of them, executors and executor of this my last will and testament. After the payment of my just debts and charges I dispose of my estate as follows, viz:

Firstly. I give unto my beloved nephew Francis Vigo McKee all my estate, real and personal, which I may die possessed of, or which may belong to me in any way, either in remainder or reversion, to have, to

* It will be seen that Mr. Commissioner Smith has made a mistake in his statement in th e amount of the bill of exchange, that amount being $8,716 2-5 instead of $8,616. (See General George R. Clarke's account, herewith printed, marked "B.")

hold, to him and his heirs forever, after the payment of my just debts as aforesaid, and except as hereinafter provided.

Secondly. Whereas I have heretofore made and entered into a contract and agreement in writing with John Law, Abner T. Ellis, and Luther H. Reed, esquires, for the recovery of certain claims I have or believe I have on the State of Virginia for supplies furnished and advances made to the troops under the command of Colonel George Rodgers Clarke in what was called the "Illinois campaign," now, I wish it distinctly understood, and it is my will, that said contract is to be binding on my executors; and I desire the same and every part of the same to be by them carried into effect in as full and ample a manner as I would do were I living, and the stipulations of the same to be as binding on my executors as they are on me, hereby re-affirming and renewing the same.

Thirdly. In the event of the collection of my said claim or claims on the State of Virginia, I hereby will and bequeath to my nephew Archibald McKee the sum of five hundred dollars, to be paid out of said claim by my said executors.

Fourthly. I will and bequeath unto my said nephews Francis Vigo and Archibald all the personal property that may be in my house at my decease, to be owned by them jointly.

Fifthly. Whereas the county of Vigo has been named after me and I feel towards it and its citizens a great degree of esteem and affection for many favors conferred and services rendered me, especially by the inhabitants of Terre Haute, it is my wish, will, and desire,
14 and earnest request, that if the claim aforesaid is recovered and the amount due me paid to my executors, *that* they or some one of them shall pay out of the same five hundred dollars to the county of Vigo, to be laid out by the commissioners of said county, or in such other mode as may be deemed most advisable by said county, in the purchase of a bell for the court-house of said county, on which is to be inscribed, "Presented by Francis Vigo." It is, however, understood that, in case said claim is not recovered, *that* said money is not to be paid, and the receipt of the treasurer of Vigo County for said sum, when paid to my executors, shall be binding and good against my said residuary legatee, and a good and sufficient discharge to said executors, or either of them, for the sum aforesaid paid as aforesaid. And it is my will that my said executors, their survivors or survivor, join with said John Law, Abner T. Ellis, and Luther H. Reed, esquires, in prosecuting the claim which I have on the State of Virginia under the contract made with those gentlemen should it become necessary to do so, and that he or they do everything which I might or could do for said purposes, and so far as is deemed necessary and advisable. I also give to each of my said executors all power, and repose in each of them every trust I have given to them jointly; provided and so far as he who shall act shall have the consent of one of the other executors. And it is my will that neither of my said executors shall be answerable for any of my estate received or to be received by the other executor.

In testimony whereof I, the said Francis Vigo, have hereunto set my hand and seal, and publish and declare this to be my last will and testament, in presence of witnesses hereto, signed at Vincennes on the ninth day of December, in the year of our Lord one thousand eight hundred and thirty-four.

VIGO. [L. S.]

Signed, sealed, and published by the said Francis Vigo, in our presence, as his last will and testament; as also in the presence of said tes-

tator, and who, at his request, have hereunto set our names as witnesses.

JOHN COLLINS.
JOHN BADOLET.

STATE OF INDIANA,
Knox County, ss:

Be it remembered that on this 5th day of April, in the year of our Lord one thousand eight hundred and thirty-six, before me, Alexander D. Scott, clerk of the probate court in and for said county, per-
15 sonally came John Badolet and John Collins, the two subscribing witnesses to the within last will and testament of Francis Vigo, late of the said county of Knox, deceased; and the said John Badolet affirmed and the said John Collins made oath that they did see the testator therein named sign and seal this will, and that they heard him pronounce, publish, and declare the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they respectively subscribed their names as witnesses to this will in the presence and at the request of the testator, and in the presence of each other.

In testimony whereof I have hereunto set my hand and seal this 5th day of April, 1836.

[SEAL.] A. D. SCOTT.

STATE OF INDIANA,
Knox County, ss:

I, A. D. Scott, clerk of Knox probate court, do certify the above and foregoing to be a true copy of the will of Francis Vigo, on file and recorded in my office, and also the proof of the same. I also certify that the executors therein named have filed a bond in the penal sum of sixty-five thousand dollars, with security approved of by me, and that they have been duly sworn to perform the duties and trusts committed to and required of them as such executors, and that they are authorized to act as such according to law.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 18th day of April, 1836.

[SEAL.] A. D. SCOTT, *Clerk.*

16 In the United States Court of Claims. December term, A. D. 1873.

ARCHIBALD MCKEE ET AL.
vs.
THE UNITED STATES. } No. 7912.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimants herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimants in the sum of forty-nine thousand nine hundred and thirty-seven dollars and sixty-five cents, the said defendants say that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed Dec. 20, 1873.

17 In the United States Court of Claims.

ARCHIBALD MCKEE, AMANDA TURNER, AND John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee.
vs.
THE UNITED STATES. } No. 7912.

At a Court of Claims held at the Capitol in the city of Washington, on the 18th day of January, 1875, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said Archibald McKee, Amanda Turner, and John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee do have and recover of and from the United States the sum of forty-nine thousand eight hundred and ninety-eight dollars and sixty cents, ($49,898.60.)

By the court.

A true copy of record.

18 In the United States Court of Claims. December term, 1874.

ARCHIBALD MCKEE, AMANDA TURNER, AND John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee,
vs.
THE UNITED STATES. } No. 7912.

The defendants, by their Attorney-General, come and ask the court for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered by this court in this case on the 18th day of January, 1875.

JOHN GOFORTH,
Asst. Atty. General.

Filed February 8, 1875.

19 In the Court of Claims. December term, 1874.

ARCHIBALD MCKEE ET AL.
vs.
THE UNITED STATES. } No. 7912.

FEBRUARY 8, 1875.

Mr. Johnston, for the defendants, presented an application, filed of

this date, for the allowance of an appeal, and it was ordered that said application be refused.

By the court.

20 In the United States Court of Claims. December term, 1874.

ARCHIBALD McKEE ET AL.
vs.
THE UNITED STATES. } No. 7912.

Mr. Johnston, for the defendants, filed the mandamus of the Supreme Court, directing the allowance of an appeal herein; and it was thereupon ordered that the appeal be allowed as prayed for.

By the court.

MAY 31, 1875.

21 Court of Claims.

ARCHIBALD McKEE ET AL.
vs.
THE UNITED STATES.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This case having been heard before the Chief-Justice and judges of the Court of Claims, at the city of Washington, on the 9th day of March, 1874, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

22 FINDINGS OF FACT.

I. This case was referred to the Court of Claims by the private act of Congress approved June 8, 1872, set forth in the petition.

II. Among the papers and official documents referred by Congress to the Court of Claims are certain letters, purporting to be original communications from the auditor of the State of Virginia to committees of the House of Representatives, enclosing copies of the accounts of General George Rogers Clarke and of Oliver Pollock, the commercial and financial agent of Virginia, at the city of New Orleans, in the years 1778 and 1779. These communications are ancient writings, purporting to be original, which cannot be authenticated at this time. By these communications and accounts it appears that General Clarke drew a bill of exchange for eight thousand seven hundred sixteen dollars and
23 forty cents, ($8,716.40,) dated December 4th, 1779, described in the petition, and that Colonel Francis Vigo, deceased, advanced to General Clarke the value thereof, and that the money so advanced was used in the military service of the State of Virginia, as set forth in the petition, and that the bill was presented for payment to the drawee, but was not paid, for want of funds, and that it has not since been paid.

III. Among the papers also referred to this court by Congress is one purporting to be original, the authenticity of which cannot now be determined, being the award or adjustment of the claim of Colonel Vigo against the State of Virginia by the commissioner of revolutionary claims for the State of Virginia, together with copies, certified by the commissioner, of the evidence referred to in his award. The award is in the following terms:

24 OFFICE OF THE COMMISSIONER OF REVOLUTIONARY CLAIMS FOR THE STATE OF VIRGINIA,
Richmond, December 16, 1835.

I have examined the claim of Francis Vigo, of Vincennes, and State of Indiana, for supplies furnished to the Illinois regiment in the fall of the year 1778, to the amount of eight thousand six hund'ed and sixteen dollars, evidenced by a set of bills of exchange drawn by George R. Clarke on Oliver Pollock, at New Orleans, for the said sum of $8,616, (which said bills have been lost or mislaid,) and which the said Vigo alleges remains unpaid to this day. I have examined also every public document within my reach which I believed would give information respecting the transactions in which the claims of individuals against the State of Virginia for supplies furnished to the Illinois regiment originated, and especially respecting the claim of Colonel Vigo. In this examination and investigation I have ascertained the following facts, to wit:

1st. That Francis Vigo was the "Spanish merchant," as he has been called by way of honorable distinction, who was renowned for his integrity, liberality, and benevolence, as well as from his firm friendship for and disinterested and efficient support of Virginia in the war of the Revolution.

2d. That, being the subject of a foreign power, he warmly espoused the cause of the colonies against the mother-country, and made large sacrifices in supporting the western troops of Virginia.

3d. That bills of exchange were drawn by General Clarke in the year 1778 upon Oliver Pollock, at New Orleans, in favor of Francis Vigo, for upwards of $10,000, for supplies furnished by him to the Illinois regiment in that year. That these bills were protested by Mr. Pollock (who was the agent of the State) for the "want of funds." That some of them were sold by M. Vigo, and afterwards paid by Virginia. That one, amounting to $298, was paid by the said Pollock to the said Vigo. That the bill for $8,616 was one of them which was not parted with by M. Vigo, but remained in his possession, (that is to say, the second of the set remained in his possession, the set consisting of Nos. 1 and 2, and the 1st having been lost,) until he suffered with a long and severe illness, commencing 1802, and continuing for several years. That, during this illness, he handed over the said bill for $8,616 to Judge Jacob Burnet, of Ohio, to obtain something, if possible, from Virginia upon it. (See statements of Francis Vigo, Pierre Menard, Jacob Burnet, all on oath; and also, as proof of the credit which should be given to the statements of the said Vigo, see the affidavits of John Badollet and Nathaniel Ewing, and statement of General Harrison, and letters from Generals Wayne, Clarke, and Knox, &c., &c.)

4th. That the said bill of $8,616 was drawn for supplies actually furnished to the Illinois regiment under the command of General G. R. Clarke by the said Francis Vigo. (See the memorial of Francis Vigo, which has been sworn to, and the affidavits of Pierre Menard and J. Badollet.)

5th. That this set of exchange (both first and second) have been lost. (See here also Francis Vigo's statement on oath, and the affidavits of Jacob Burnet and Nathaniel Ewing.)

6th. That the said amount of $8,616 remains at this day unsatisfied and due to the said Francis Vigo. (See said Vigo's statement on oath, Pierce Menard's affidavit, and the affidavit of John Badollet and
25 Nathaniel Ewing; also certificates of the auditor and treasurer of Virginia.)

7th. That all General Clarke's bills on Pollock at New Orleans were for specie. (See General Clarke's certificate, journal of the H. of del., May session, 1783, page 73.)

8th. That the smaller bills which were drawn in the latter part of the year 1778 by General Clarke upon Oliver Pollock in favor of Francis Vigo, and which he says in his memorial were parted with by him, and afterwards paid by Virginia, are proved by the Illinois documents and paper', now in my possession, to have been paid by Virginia. But these documents and papers furnish no proof whatever of the payment of the said larger bill of $8,616, the amount of which is now claimed by Francis Vigo.

In conformity with the foregoing facts, which are set forth in pages 1, 2, and 3 of this paper, I have adjusted the claim. It gives me pleasure to be able to make a favorable adjustment, and to ascertain the sum of money due from the State of Virginia to a man who has rendered the most important services to his adopted country, and who, if his neighbors, who are amongst the most distinguished men in the part of the United States in which he resides, are to be believed, is one of the most upright and honorable of men.

STATEMENT.

The State of Virginia to Francis Vigo, Dr.

*1778. To advances made to General Clarke for the use of the Illinois regiment under the command of the said Clarke	$8,616 00
To interest on the same, at 5 per cent. per annum, from March 20, 1779, to January 10, 1835	24,038 85
Total	32,654 85

After having made a satisfactory examination of the evidence touching this claim, I have adjusted it according to the above statement, and have found a sum of money due to the said Francis Vigo, of principal and interest, amounting to thirty-two thousand six hundred and fifty-four dollars and eighty-five cents.

JOHN H. SMITH,
Commissioner, &c.

26 IV. No rules and regulations have heretofore been adopted by the United States in the settlement of like cases, except such as may be inferred from the policy of Congress when passing private acts for the relief of various persons. When passing such private acts Congress has allowed interest upon the claim up to the time that the relief was granted.

V. The claimants are the legatees and heirs of legatees of Colonel Francis Vigo, as set forth in the petition; the executors and administrators of the estate of Colonel Vigo are deceased, and the estate has been settled, excepting this claim as set forth in the petition.

By the court.

27 United States Court of Claims.

ARCHIBALD McKEE ET AL. *vs.* THE UNITED STATES. } 7912. Filed January 18, 1875.

NOTT, J., delivered the opinion of the court:

Congress, on the 8th of June, 1872, passed the following private act: "Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, That the claim of the heirs and legal representatives of Col. Francis Vigo, deceased, late of Terre Haute, Ind., for money and supplies furnished the troops under command of Gen. George Rogers Clarke, in the year 1778, during the revolutionary war, be, and the same hereby is, referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations."

"The troops under the command of Gen. George Rogers Clarke, in the year 1778," were in the service of the State of Virginia. For money and supplies furnished to them the Government of the United States was not primarily liable. The Government, indeed, assumed those expenditures by the resolution October 16, 1780, (6 Jour. Congress, p. 213,) the ordinance 7th May, 1787, (1 Laws U. S., ed. 1815, p. 662,) and the act 5th August, 1790, (2 id., p. 174,) but the last-cited act expressly provided that no claim of any citizen should be "admitted as a charge against the United States in the account of any State, unless the claim was allowed by such State before the 24th day of September, 1788." A number of claims, including the one now before us, failed to comply with this condition, and since then Congress, when convinced of their equity, have from time to time passed numerous private acts to re-imburse the parties. It is evident that, without the private act, the claimants here would have no right of action against the Government. Congress appears to have recognized this fact when taking measures to give them relief. Therefore, instead of sending the claim here by an ordinary reference to try and determine the same, they have referred it to this court for "adjustment and settlement." They have also provided that "the court shall be governed," not by the ordinary rigid rules of law, but "by the rules and regulations heretofore adopted by the United States in the settlement of like cases." Taking into consideration the peculiarity of the claim, the action of Congress in like cases, the manifest impossibility of maintaining any such action as a matter of legal right, we have reached the conclusion that Congress designed to pay this indebtedness of Virginia to whomsoever it might be justly due, and
28 sought the aid of this court to the end that the true parties and their respective rights might be judicially ascertained. The adjustment and settlement appear to us to be an award rather than a judgment, and, although this award will take the form of a judgment, we think that it will not be subject to appeal. The recent decision of the Supreme Court in Atocha's case appears to cover this; the claim here being primarily against another government, and no right of appeal being given by the private act. For these reasons no finding of facts will be filed, and the parties will be left to apply to the Supreme Court for a mandamus if this conclusion be deemed questionable.

Among the papers transmitted to this court by Congress are certain reports made by the auditor of the State of Virginia to members of committees of Congress apparently charged with the duty of investigating the claim, and also an award or adjustment of the claim in favor of Colonel Vigo against the State of Virginia, made by the commissioner of revolutionary claims for that State. This award fixes an equitable indebtedness on the part of Virginia to Colonel Vigo, which indebtedness Congress have now in effect assumed on the part of the

United States. The private act also directs this court to give "proper consideration to official acts, if any have heretofore been had in connection with this claim." And this provision, taken in connection with the reference of the papers by Congress to this court, seems to indicate that it is these official acts to which the court shall give proper consideration.

From these papers it appears that General Clarke, December 4, 1779, drew a bill of exchange for $8,616 upon Oliver Pollock, the commercial and financial agent of Virginia, in the city of New Orleans. This draft was cashed by Col. Francis Vigo. The money was credited by General Clarke to the State of Virginia, and was subsequently acknowledged by the State in the settlement of his accounts. The bill of exchange was not paid when presented, for want of funds, and the evidence leaves little doubt that it never has been paid. It has not been produced by the claimants, but there is proof indicating its loss, and the claim upon it moreover was pressed upon the State of Virginia from the close of the war down to the time when it was allowed by the "commissioner of revolutionary claims for the State of Virginia," and virtually merged in his award.

By the "ordinance for settling the accounts between the United States and individual States," 7th May, 1787, (1 Laws United States, ed. 1815, p. 662,) it is provided "that on all of the accounts aforesaid" interest shall be allowed at the rate of 5 per cent. per annum. Since then Congress, in a number of private acts, have allowed interest upon such claims up to the time that the relief was given. The private act referring the case to this court provides that in the adjustment and settlement the "court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases." No rules and regulations are known to us, except such as may be deemed inferable from the ordinance 7th May, 1787, and the private acts subsequently passed, and they establish the allowance of interest as a rule of adjustment. We do not see how effect can be given to the mandate of the private act if it be not applied to the allowance of interest; nor do we suppose that Congress intended, in this particular, to treat these parties in a different manner than they have treated others having similar claims. Our conclusion, therefore, is that interest should be allowed.

It appears by other evidence that the claimants are the legatees and heirs of legatees of Colonel Vigo, substantially as set forth in their petition, and that the executors and administrator of the estate of
29 Colonel Vigo are deceased, and that the estate has been settled, with the exception of this claim.

The adjustment and settlement of the claim of the heirs and legal representatives of Colonel Vigo will stand as follows:

Bill of exchange drawn by General Clarke December 4, 1778	$8,616 00
Interest on the same, at 5 per cent. per annum, from March 20, 1779, to January 18, 1875	41,282 60
Total	49,898 60

For which judgment will be entered.

30 In the Court of Claims.

ARCHIBALD MCKEE, AMANDA TURNER, AND John T. Turner, her husband, Josiah McKee, Archibald McKee, jr., Shannon McKee, and Wesley McKee
vs.
THE UNITED STATES.
No. 7912.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office February 8, 1875, and of the order of the court refusing the same; of the filing of the mandamus of the Supreme Court directing the allowance of an appeal, and the allowance thereupon of the appeal, and of the finding of facts by the court, and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this eleventh day of September, 1875.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 588. The United States, appellants, vs. Archibald McKee, Amanda Turner, John T. Turner, Josiah McKee, Archibald McKee, jr., Shannon McKee, & Wesley McKee. Court of Claims. Filed 14th September, 1875.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
ARCHIBALD McKEE AND OTHERS. } No. 588.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
ARCHIBALD MCKEE AND OTHERS. } No. 588.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

The findings of fact are upon pp. 11–13 of the Record.

An abstract of the case is as follows: On the 4th of December, 1779, Gen. George Rogers Clarke, at that time commanding the Virginia Military Expedition to Illinois, in payment of supplies furnished by one Francis Vigo, drew a bill in his favor upon the agent of Virginia at New Orleans, for $8,716.40, ($8,616.) (See record, p. 7, note.) This bill was protested "for want of funds" and has never been paid. Mr. Vigo applied for payment to Virginia, and the bill was lost by agents to whom it had been intrusted for the purpose of procuring payment. It does not appear from the record when the claim was first presented against the United States.

However, upon the 8th of June, 1872, an act was passed entitled "An act referring the claim of the heirs and legal representatives of Col. Francis Vigo, deceased, to the Court of Claims for adjustment," which is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the claim of the heirs and legal representatives of Col. Francis Vigo, deceased, late of Terre Haute, Ind., for money and supplies furnished the troops under command of Gen. George Rogers Clarke, in the year 1778, during the revolutionary war, be, and the same hereby is referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations."

The claimants are the personal representatives and legatees of Vigo, he having died in 1836, and his estate having been long ago settled up and his executors dead.

Upon *adjustment* under the above act, the Court of Claims gave judgment for $8,616, principal money, together with $41,282.60, interest thereupon at 5 per cent. per annum from March 20, 1779, to January 18, 1875, *i. e.*, for nearly ninety-six years.

On behalf of the United States, the following errors are assigned:

I. Upon the facts, judgment should have been in favor of the United States.

II. At all events, no interest should have been allowed.

I. Judgment should have been in favor of the United States.

The act above quoted is a private act, and so its words are those of the claimants. Any doubt arising thereupon is therefore to be resolved *against* the claimants.

The act does not acknowledge the claim to be just. Whether it be just is the main question submitted thereby to the Court of Claims.

In order that the Court should find the claim to be justly due by the United States, it was necessary that some previous statute should have made it so.

No statute is cited by the claimants showing that Vigo, at any time, had a claim *against the United States.* All that the acts and ordinances of October 16, 1780, and 7th of May, 1787, and August 5, 1790, relied upon by the claimants, prove, is that similar claims, *when allowed by Virginia*, were to be, or have been, paid by the United States *to the latter.*

The legislation upon this subject is well stated in the brief for the claimants in the court below, and from such statement I make the following extract:

"On the 16th of October, 1780, Congress adopted the following resolution:

"'*Resolved*, That the unappropriated lands that may be ceded or relinquished to the United States by any

particular State, pursuant to the recommendation of Congress of the 6th of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States; that each State which shall be so formed shall contain a suitable extent of territory, not less than one hundred nor more than one hundred and fifty miles square, or as near that as the circumstances will admit; *that the necessary and reasonable expenses which any particular State shall have incurred, since the commencement of the present war, in subduing any British posts, or in maintaining forts or garrisons within and for the defense, or in acquiring any part of the territory that may be ceded or relinquished to the United States, shall be re-imbursed.*' (6 *Journal of Congress*, 1780, *p.* 213.)

"In pursuance of these resolutions and promises of Congress, the State of Virginia, at the session of its general assembly which commenced on the 20th day of October, 1783, passed an act authorizing its delegates in Congress "to convey to the United States, in Congress assembled, all the right of that Commonwealth to the territory northwestward of the river Ohio," a vast region of country; and on the 1st day of March, 1784, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Munroe, the then delegates from that State, in open session, executed a deed conveying the said territory to the United States, which was accepted by Congress. The act of the legislature of Virginia which authorized the cession of the territory, and under which the deed was made, is recited *in extenso* in the deed itself, and shows

that the cession was made upon certain conditions, among which are the following:

"'That the necessary and reasonable expenses incurred by this State in subduing British posts, or maintaining forts and garrisons within and for the defense or in acquiring any part of the territory so ceded or relinquished, shall be fully re-imbursed by the United States; and that one commissioner shall be appointed by Congress, one by this Commonwealth, and another by these two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress of the 10th of October, 1780, respecting such expenses. (Laws of the United States, ed. 1815, 472.)

* * * * * *

"Whether the commissioners provided for by the act of the Virginia legislature in the above cited act were appointed I have not been able to ascertain in the limited investigation I have been able to give the subject; but I am under the impression that this condition of the cession was never carried into effect. A different mode of settlement was adopted. On the 7th of May, 1787, a month prior to the enactment of the ordinance for the government of the Northwest Territory, Congress adopted an ordinance, entitled 'An ordinance for the settling the accounts between the United States and individual States,' which, after naming the several States interested, including Virginia, provided as follows:

"'That it shall be the duty of the said commissioners, respectively, to receive of the States for which they are

appointed all their accounts and vouchers for payments made on account of bounties, pay and depreciation of pay, to the late Army of the United States; and for advances to the militia called out under the authority of the United States and actually in their service, and to give descriptive acknowledgments thereof to the States from which they may be received, which accounts and vouchers shall be immediately forwarded to the commissioner of army accounts, whose duty it shall be to examine and pass such as are authorized by the resolves of Congress and supported by proper vouchers; and to state such as may not fall under the above description, together with such remarks as may tend to elucidate the nature of these claims.

"'That it shall further be the duty of the said commissioners to receive, in like manner, the accounts and vouchers for the moneys paid and supplies furnished, on the requisitions of Congress made previously to October, 1781, and to forward the same to the office of the Comptroller of the Treasury.

"'That it shall also be the duty of the said commissioners to receive and examine all the claims of the States to which they are appointed against the United States for advances or disbursements by them made for the use of the late commissary, quartermaster, clothing, marine, and hospital departments, or under any other description whatsoever; to pass upon all such as are authorized by the resolves of Congress and supported by proper vouchers, so far as it respects the evidence offered in support of the said claims; and to state such as are not thus warranted or supported, together with such remarks as may explain the nature of these accounts and the reasons offered for the deficiency of vouchers.

"'*And be it further ordained by the authority aforesaid, That on all the accounts aforesaid interest shall be allowed at the rate of* 6 *per cent. per annum, agreeably to the resolves of Congress.*' (1 *Laws of U. S., ed.* 1815, 662, 663.)

"This ordinance allowed the States six months in which to file their claims with the commissioners provided for in the act, and required the commissioners to report within twelve months after they entered upon their duties. The ordinance then further provides:

"*Be it further ordained*, That a board, consisting of three commissioners, be appointed by the United States in Congress assembled, whose duty it shall be to receive from the Comptroller of the Treasury and from the commissioner of army accounts all the accounts and claims of the several States deposited in their respective offices, and to examine such of the said accounts as shall have been passed upon by the commissioners of the several districts, in order that the same may be finally adjusted *on uniform and equitable principles*, having reference to the settlement of accounts heretofore made by the commissioners of the different States: *Provided*, That such revision of the accounts above mentioned shall not in any wise affect the validity of the vouchers admitted by the commissioners of the respective districts.

"*And be it further ordained*, That whenever it shall appear to the said board of commissioners that advances or disbursements, payments, or supplies of the description aforesaid have been made by any of the States subsequent to the 18th of April, 1775, for articles or services for the use of the United States, that the said commissioners be, and they are hereby, vested with full power and authority to make such allowance for the same as

they shall think consistent *with the principles of general equity*, although such advancements or disbursements may not be sanctioned by the resolves of Congress or supported by regular vouchers, so as to enable the said commissioners to make a final adjustment of all the accounts subsisting between the United States and the several members thereof, agreeably to such quota as Congress shall hereafter determine. (1 *Laws of U. S.*, *ed.* 1815, 664.)

* * * * * * *

"The work contemplated by the ordinance was not perfected within the time named, as it could not well be, and Congress passed another act, which was approved August 5, 1790, upon this subject, which provided for a board of three commissioners, with powers similar to those conferred by the ordinance of May 7, 1787. The only two sections of this act which have any relation to the case at bar are the following:

"'SEC. 3. That it shall be the duty of the said commissioners to receive and examine all claims which shall be exhibited to them before the 1st day of July, 1791, and to determine on all such as shall have accrued for the general or particular defense during the war, and on the evidence thereof, *according to the principles of general equity*, (although such claims may not be sanctioned by the resolves of Congress, or supported by regular vouchers,) so as to provide for the final settlement of all accounts between the United States and the States individually; but no evidence of any claim heretofore admitted by a commissioner of the United States, for any State or district, shall be subject to such examination; *nor shall the claim of any citizen be admitted as a charge against the United States in the account of any*

State, unless the claim was allowed by such State before the 24th day of September, 1788.

"'SEC. 5. That the commissioners shall debit each State with all advances which have been or may be made to it by the United States, *and with the interest thereon*, to the last day of the year 1789, and shall credit each State for its disbursements and advances on the principles contained in the third section of this act, *with interest to the day aforesaid*, and, having struck the balance due to each State, shall find the aggregate of all the balances, which aggregate shall be apportioned between the States agreeably to the rule hereinafter given, and the difference between such apportionments and the respective balances shall be carried in a new account to the debit or credit of the States respectively, as the case may be.' (2 *Laws of the United States, ed.* 1815, 174.)"

[It will be seen in the sequel that the learned counsel is mistaken in supposing as above that the commissioners, provided for by the act of the Virginia legislature, were not appointed. Public documents show that they were appointed, and that they duly discharged the duty with which they were charged.]

It appears from the above legislation that the United States acknowledged the justice of a claim by Virginia for expenditures of the sort mentioned above, but did not make themselves debtors to those who, in such matters, had dealt with the State. On the contrary, an examination and allowance of such claims by Virginia was a necessary prerequisite to even an examination of them by the United States. The former proceeding was to ascertain their authorization by the State, and the latter

to ascertain whether if so authorized they belonged to the class of debts which the United States had as above engaged to pay.

(*a.*) To the present day there has been no change of legislation upon this topic that will authorize this Vigo claim to be considered as a claim directly against the United States.

(*b.*) It has never been *allowed* by Virginia.

At a very early day Mr. Vigo endeavored to secure its payment by that State, but for some reason or other, now forever hidden, along with most other reasons upon which many persons who one hundred years ago thought themselves creditors, failed to establish their claims, it was not paid or even *allowed.* Unless we regard ourselves as more intelligent upon this matter than were those contemporaneous with it, or that we are more honest than our fathers, it should be concluded that it was not paid or allowed, *for some good reason.* If we knew what that reason was, we might sit in judgment upon it, and perhaps conclude that it was invalid. But we are not at all informed what it was. In such a state of the case, it seems impossible to deny that what was done was properly done.

If we look at the case by the record which comes before the court—a record based upon such facts as the diligence of the claimants has been able, or has thought best, to produce, the claim is one of extraordinary merit. It presents a case in which a generous, innocent foreigner, under the most noble impulses, succored a detachment of the revolutionary army whilst involved in the Illinois wilderness, and by a disinterested and perhaps

lavish use of his private means, enabled them to secure to the Union the splendid territory beyond the Ohio. I need not enlarge upon this topic. The bare facts are more eloquent than any comment that I can make upon them.

What is material to observe in this connection is that notwithstanding these merits, at once so solid and so impressive, the public men who were contemporary with the act declined to recognize them.

More than this, Mr. Vigo survived to a most venerable old age, preserving all the while the esteem of the leading citizens of that community, survived amidst the wonderful development and prosperity of the children of those whom he had aided, all the while cherishing and pursuing this claim, yet none the less was it constantly disregarded.

It seems impossible that there should not have been very powerful countervailing reasons to produce action like this upon the part of Virginia.

This state of the case is mentioned here in order to direct attention to the importance of the link *missing* in the case of the claimants, viz, an *allowance* by Virginia; that allowance which, *except perhaps in special cases depending on their own reasons*, Congress has always required before ordering such claims to be paid.

It may be said that the report of Commissioner Smith contained in the record shows such *allowance*. Upon the record it will be seen that it is not found as a fact that Smith was a commissioner, or that the paper purporting to be a report was such, or, granting both of these points, that he was authorized to do more than *report* his views to the legislature of Virginia for allowance or rejection by them.

Upon this matter the Court of Claims say:

"III. Among the papers also referred to this court by Congress is one purporting to be original, the authenticity of which cannot now be determined, being the award or adjustment of the claim of Colonel Vigo against the State of Virginia by the commissioner of revolutionary claims for the State of Virginia, together with copies, certified by the commissioner, of the evidence referred to in his award."

It seems evident that when Congress referred to the Court of Claims the Vigo claim, "*along with all the papers and official documents belonging thereto*," it did not give any especial sanction to such "papers." They were doubtless papers filed before Congress by the claimants, and were sent, *valeant quantum valeant*, to the court, for the purpose of being scrutinized as to both their *competency* and their *weight* as evidence. That the claimants had to say that such papers and records were produced from the files of the Congressional Committee on Claims was not equivalent to saying that thereby they were produced from a repository which of itself gave them authenticity.

And so the court, to some extent at least, seems to have considered as regards this "report." They expressly decline to determine its authenticity! Its character and contents must therefore be rejected from the findings of fact.

In this connection, I may observe that the same thing is true as to the "papers and official documents" mentioned in the second finding of fact. The court says that they "are ancient writings, purporting to be original, which cannot be authenticated at this time." In order to make them facts, they must have been authenticated

by the court. If the court had said that they were ancient writings, *produced from a proper depository*, and not susceptible of authentication at present, it might be presumed that by the latter expression the court meant authentication *by witnesses to their execution or to the handwriting;* being authenticated meanwhile as all ancient witings can be, viz, by their place of deposit, &c. This is not the case here, however. The court finds that they have not been authenticated, and does not connect that finding with a context limiting the meaning of "authenticated," as above.

Upon the record, therefore, I submit that judgment must necessarily be reversed.

However, I need not place the case upon such dry technical ground.

From public documents now on file in the archives of the Government, which I suppose the court may, *sua sponte*, examine, it appears that Mr. Smith *was* a commissioner on the part of Virginia to "investigate and adjust" revolutionary claims against that State, and that his function was limited to reporting his action to the general assembly, for confirmation, or the contrary, *by that body;* that he did not so report this claim, but sent it directly to Congress; such report having been written on the 16th of January, 1835, and presented to Congress on the fifteenth day thereafter, viz, February 4, 1835. (Reports of Committees of the House of Representatives, Twenty-seventh Congress, (A. D. 1842,) second session, vol. 2, No. 525, and also same session, vol. 5, No. 1028.)

* Teschmaker's Case, 22 How. 405;
Romero's Case, 1 Wall., 721.

That document is an adverse report by the Committee on Revolutionary Claims upon this Vigo claim.

It is too elaborate for quotation here, but it sets out substantially the following defense to the claim, as against the United States: General Clarke reported to Virginia the amount of the bill of exchange, as one item of his military expenditures, previously to the settlement made between that State and the United States by the commissioners appointed under the condition in the deed of cession, and that commission awarded, and Virginia accepted, the round sum of $500,000 in full of all such expenses, "including all expenses of troops." There is, therefore, a very violent, if not conclusive, presumption that the award covered this very item. Although the bill had not then been *paid*, yet the presentation of the claim by Virginia amounted to its *allowance*, and no more was required for its acceptance by the United States.

It is from this document, which probably escaped the attention of the court below, that I have ventured to say that the learned counsel for the claimants is mistaken in supposing that the commissioners referred to in the deed of cession were not appointed. Their names are given in the above report, and it is said that no copy of their award can be found, but that on the 27th of June, 1790, General Knox, at that time Secretary of War, stated in an official report the substance of their conclusions to have been as aforesaid.

Upon the whole, neither the findings of facts nor the *archives* of the Government (perhaps included in the "official documents" or "official acts" *referred* by the act of 1872) warrant the judgment given below.

Judgment should have been rendered for the defendant.

II. The second assignment of error is in regard to the allowance of interest.

So far as I know, this is the first case in which interest has been allowed for so long a period.

I refer the Court in this connection to its own language in Gordon *v.* The United States, 7 Wallace, 188.

This question must turn entirely upon the wording of the above act of 1872, inasmuch as under the general law the Court of Claims has no authority to allow interest in such a case. (Rev. Stat., sec. 1091.)

No doubt Congress had the power to order that interest should be paid, and the existence of such order would have precluded the propriety of judicial criticism thereupon.

I submit that no such order has been given by the above act of 1872. The words therein relied upon by the claimants for this purpose are: "And in making such adjustment and settlement the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statute of limitations." In connection with this the court find, (Record, p. 13, IV:) "No rules and regulations have heretofore been adopted by the United States in the settlement of like cases except such as may be inferred from the policy of Congress when passing private acts for the relief of various persons. When passing such private acts, Congress

has allowed interest upon the claim up to the time that the relief was granted."

It seems:

1. That "rules and regulations," in the above connection, refers to the action of the Departments under general principles governing "like cases," and not to the exceptional dealing evidenced by *special* acts of Congress. Prior legislation for special cases is not included inthese words. They are well known to refer to the *quasi* legislation by heads of departments, &c., in reference to matters ordinarily coming before them:

2. Also, that the court will *sua sponte* inform itself of the action of the United States by rules and regulations in such cases:

3. Therefore, that the above finding of the Court of Claims appears to be inadvertent, inasmuch as it can be seen that "rules and regulations" *have been* heretofore adopted by the United States in the settlement of like cases, and that these rules *exclude interest* unless given in terms by an act of Congress.

As fitting the case still more accurately I ask attention to the following note from Mr. Tayler, the present able, learned, and exact First Comptroller of the Treasury:

"FIRST COMPTROLLER'S OFFICE,
"*November* 13, 1875.

"SIR: In answer to your inquiry I have to state that in the adjustment and settlement of claims for services rendered by officers of the United States during the

revolutionary war, or for supplies furnished the troops in that war, the rules and regulations heretofore adopted by the United States prohibit the payment of interest unless authority to pay is expressly given by act of Congress in special cases.

"Executive document No. 42, vol. 2, second session Twenty-fifth Congress, contains a synopsis of the legislation of Congress on revolutionary claims up to 1837, showing the cases in which interest has and has not been allowed.

"Very respectfully,

"R. W. TAYLER,
"*Comptroller.*

"Hon. S. F. PHILLIPS,
"*Solicitor-General.*"

In this connection I was referred by Mr. Tayler to an opinion of Elisha Whittlesey, so universally and most favorably known for his administration of the office of First Comptroller a number of years since. That opinion is in vol. 4 of Comptroller's Decisions, p. 50, and was rendered December 31, 1853, in regard to a claim for *interest* upon a revolutionary debt, preferred by the heirs of one John Campbell.

I will premise that the private act which made it the duty of the Treasury Department to *audit and adjust* it, required that this should be done *upon principles of equity and justice.* These latter words were relied upon to give a special ground for claiming interest.

The opinion is very elaborate, and is regarded in the office of the Comptroller as a sort of Treasury organic law.

I can only cite passages showing its concurrence with Mr. Tayler's views given above.

Mr. Whittlesey refers to a previous decision (June 10, 1833,) upon the same matter, by Richard Harrison, First Auditor, and Joseph Anderson, First Comptroller, and quotes from their opinion the following passage:

"The rules of settlement of the Treasury do not permit the allowance of *interest*, except where it is specially provided for in cases of contracts or expressly authorized by law. Consequently the item of interest, charged by said claimant, has been deemed inadmissible."

Mr. Whittlesey then proceeds:

"The gentlemen who made this decision had been long in the public service, and were better instructed in the principle of settling public accounts than any two men then living, (except Peter Hagner,*) or will live hereafter, so far as I have any reason to believe," (p. 55.)

And again:

"Suppose the act had directed the account to be settled and paid, and had said nothing more, interest could not have been computed without violating the principles which have controlled the settlement of accounts and claims from the commencement of the Government; and, as I have said before, the discretion to settle the claim on the principles of 'justice and equity' does not confer the power to allow interest," (p. 53.)

Inasmuch, then, as the "rules and regulations" of the United States refuse interest unless specially given by

* That Mr. Hagner concurred in refusing interest upon revolutionary claims except where given specially by an act of Congress, see a report by him in Ex. Doc. H. R. No 260, first session Twenty-sixth Congress, vol. 7.

some act of Congress, and inasmuch as the present act refers the question of interest entirely to the "rules and regulations," and otherwise is entirely silent thereupon, it seems that the claimants are, at all events, entitled to no interest.

S. F. PHILLIPS,
Solicitor-General.

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In the Supreme Court

OF THE UNITED STATES.

October Term, A. D. 1875.

THE UNITED STATES,
Appellants.

vs.

ARCHIBALD McKEE ET AL.,
Appellees.

No. 588.

ARGUMENT FOR APPELLEES,

BY

W. PENN. CLARKE,

Attorney for Appellees.

Chronicle Job Rooms, 914 Pennsylvania Avenue.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

THE UNITED STATES, APPELLANTS.
vs.
ARCHIBALD McKEE ET AL., APPELLEES. } No. 588.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF THE CASE.

This suit was commenced in the Court of Claims by the appellees, under a private act, approved June 8, 1872, which reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, late of Terre Haute, Indiana, for money and supplies furnished the troops under command of General George Rogers Clarke, in the year 1778, during the revolutionary war, be, and the same hereby is, referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement the said court shall be

governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations."

Upon the hearing of the case, the Court of Claims found the facts as follows:

I. This case was referred to the Court of Claims by the private act of Congress approved June 8, 1872, set forth in the petition.

II. Among the papers and official documents referred by Congress to the Court of Claims are certain letters, purporting to be original communications from the auditor of the State of Virginia to committees of the House of Representatives, inclosing copies of the accounts of General George Rogers Clarke and of Oliver Pollock, the commercial and financial agent of Virginia, at the city of New Orleans, in the years 1778 and 1779. These communications are ancient writings, purporting to be original, which cannot be authenticated at this time. By these communications and accounts, it appears that General Clarke drew a bill of exchange for eight thousand seven hundred sixteen dollars and forty cents, ($8,716.40,) dated December 4th, 1779, described in the petition, and that Colonel Francis Vigo, deceased, advanced to General Clarke the value thereof, and that the money so advanced was used in the military service of the State of Virginia, as set forth in the petition, and that the bill was presented for payment to the drawee, but was not paid, for want of funds, and that it has not since been paid.

III. Among the papers also referred to this court by Congress is one purporting to be original, the authenticity of which cannot now be determined, being the award or adjustment of the claim of Colonel Vigo against the State of Virginia, by the commissioner of revolutionary claims for the State of Virginia, together with copies, certified by the commissioners, of the evidence referred to in his award. The award is in the following terms:

OFFICE OF THE COMMISSIONER OF REVOLUTIONARY CLAIMS FOR THE STATE OF VIRGINIA,

Richmond, December 16, 1835.

I have examined the claim of Francis Vigo, of Vincennes, and State of Indiana, for supplies furnished to the Illinois regiment in the fall of the year 1778, to the amount of eight thousand six hundred and sixteen dollars, evidenced by a set of bills of exchange drawn by George R. Clarke on Oliver Pollock, at New Orleans, for the said sum of $8,616, (which said bills have been lost or mislaid,) and which the said Vigo alleges remains unpaid to this day. I have examined also every public document within my reach, which I believed would give information respecting the transactions in which the claims of individuals against the State of Virginia for supplies furnished to the Illinois regiment originated, and especially respecting the claim of Colonel Vigo. In this examination and investigation I have ascertained the following facts, to wit:

1st. That Francis Vigo was the "Spanish merchant," as he has been called by way of honorable distinction, who was renowned for his integrity, liberality, and benevolence, as well as from his firm friendship for and disinterested and efficient support of Virginia in the war of the Revolution.

2d. That, being the subject of a foreign power, he warmly espoused the cause of the colonies against the mother-country, and made large sacrifices in supporting the western troops of Virginia.

3d. That bills of exchange were drawn by General Clarke in the year 1778 upon Oliver Pollock, at New Orleans, in favor of Francis Vigo, for upwards of $10,000, for supplies furnished by him to the Illinois regiment in that year. That these bills were protested by Mr. Pollock (who was the agent of the State) for the "want of funds." That some of them were sold by Mr. Vigo, and afterwards paid by Virginia. That one, amounting to $238, was paid by the said Pollock to the said Vigo. That the bill for $8,616 was one of them which was not parted with by Mr. Vigo, but remained in his possession,

(that is to say, the second of the set remained in his possession, the set consisting of Nos. 1 and 2, and the 1st having been lost,) until he suffered with a long and severe illness, commencing 1802, and continuing for several years. That, during this illness, he handed over the said bill for $8,616 to Judge Jacob Burnet, of Ohio, to obtain something, if possible, from Virginia upon it. (See statements of Francis Vigo, Pierre Menard, Jacob Burnet, all on oath; and also, as proof of the credit which should be given to the statements of the said Vigo, see the affidavits of John Badollet and Nathaniel Ewing, and statement of General Harrison, and letters from Generals Wayne, Clarke, and Knox, &c., &c.)

4th. That the said bill of $8,616 was drawn for supplies actually furnished to the Illinois regiment under the command of General G. R. Clarke by the said Francis Vigo. (See the memorial of Francis Vigo, which has been sworn to, and the affidavits of Pierre Menard and J. Badollet.)

5th. That this set of exchange (both first and second) have been lost. (See here also Francis Vigo's statement on oath, and the affidavits of Jacob Burnet and Nathaniel Ewing.)

6th. That the said amount of $8,616 remains at this day unsatisfied and due to the said Francis Vigo. (See said Vigo's statement on oath, Pierre Menard's affidavit, and the affidavit of John Badollet and Nathaniel Ewing; also certificates of the auditor and treasurer of Virginia.)

7th. That all General Clarke's bills on Pollock at New Orleans were for specie. (See General Clarke's certificate, journal of the H. of Del., May session, 1783, page 73.)

8th. That the smaller bills which were drawn in the latter part of the year 1778 by General Clarke upon Oliver Pollock in favor of Francis Vigo, and which he says in his memorial were parted with by him, and afterwards paid by Virginia, are proved by the Illinois documents and papers, now in my possession, to have been paid by Virginia. But these documents and papers furnish no proof whatever of the payment of the said larger bill of $8,616, the amount of which is now claimed by Francis Vigo.

In conformity with the foregoing facts, which are set forth in pages 1, 2, and 3 of this paper, I have adjusted the claim. It gives me pleasure to be able to make a favorable adjustment, and to ascertain the sum of money due from the State of Virginia to a man who has rendered the most important services to his adopted country, and who, if his neighbors, who are amongst the most distinguished men in the part of the United States in which he resides, are to be believed, is one of the most upright and honorable of men.

STATEMENT.

The State of Virginia to Francis Vigo, Dr.

*1778.	To advances made to General Clarke for the use of the Illinois regiment under the command of the said Clarke	$8,616 00
	To interest on the same, at 5 per cent. per annum, from March 20, 1779, to January 10, 1835	24,038 85
	Total	32,654 85

After having made a satisfactory examination of the evidence touching this claim, I have adjusted it according to the above statement, and have found a sum of money due to the said Francis Vigo, of principal and interest, amounting to thirty-two thousand six hundred and fifty-four dollars and eighty-five cents.

JOHN H. SMITH,
Commissioner, &c.

IV. No rules and regulations have heretofore been adopted by the United States in the settlement of like cases, except such as may be inferred from the policy of Congress when passing private acts for the relief of various persons. When passing such private acts, Congress has allowed interest upon the claim up to the time that the relief was granted.

V. The claimants are the legatees and heirs of legatees

of Colonel Francis Vigo, as set forth in the petition; the executors and administrators of the estate of Colonel Vigo are deceased, and the estate has been settled, excepting this claim, as set forth in the petition.

And upon these facts the Court adjusted and settled the claim as follows:

Bill of exchange drawn by General Clarke December 4, 1778	$8,616 00
Interest on the same, at 5 per cent. per annum, from March 20, 1779, to January 18, 1875.	41,282 60
Total	$49,898 60

For which amount judgment was rendered in favor of the claimants, and from which judgment the United States now appeals, and assigns for error the following:

I. Upon the facts, judgment should have been in favor of the United States.

II. At all events, no interest should have been allowed.

ARGUMENT FOR THE APPELLEES.

I. The liability of the United States to pay this claim dates back to the cession of what was known as the Northwest Territory by the State of Virginia, in 1783, and prior to the adoption of our present Constitution. It grows out of a solemn compact between Virginia and this Government, which compact was invited by the Congress of the Confederation. On the 6th of September, 1780, Congress adopted the report of a committee, to whom the subject had been previously referred, which states:

That it is advisable to press upon those States which can remove the embarrassments respecting the Western country *a liberal surrender of a portion of their territorial claims*, since they cannot be preserved entire

without endangering the stability of the General Confederacy; to remind them how indispensably necessary it is to establish the Federal Union on a fixed and permanent basis, and on principles acceptable to all its respective members; how essential to public credit and confidence; to the support of our army; to the vigor of our counsels and success of our measures; to our tranquillity at home, our reputation abroad; to our very existence as a free, sovereign, and independent people—that they are fully persuaded the wisdom of the respective legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States and so necessary to the happy establishment of the Federal Union; that they are confirmed in these expectations by a review of the before-mentioned act of the Legislature of New York, submitted to their consideration; that this act is expressly calculated to accelerate the Federal alliance by removing, as far as depends on that State, the impediment arising from the Western country, and for that purpose to yield up a portion of territorial claim for the general benefit; whereupon,

Resolved, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of the several States, and that it be earnestly recommended to those States who have claims to the Western country to pass such laws, and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the articles of confederation. (6 Journal of Congress, 1780, pp. 179, 180.)

On the 16th of October following Congress adopted the following resolution:

Resolved, That the unappropriated lands that may be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress of the 6th of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States; that each State which shall be so formed shall contain a suitable extent of territory, not less than one hundred nor more than one hundred and fifty miles square, or as near that as the circumstances will admit; *that the necessary and reasonable expenses which any particular State shall have incurred, since the commencement of the present war, in subduing any British posts, or in maintaining forts or garrisons within and for the defense, or in acquiring any part of the territory that may be ceded or relinquished to the United States, shall be reimbursed.* (6 *Journal of Congress*, 1780, *p.* 213.)

In pursuance of these resolutions and promises of Congress the State of Virginia, at the session of its General Assembly which commenced on the 20th day of October, 1783, passed an act authorizing its delegates in Congress "to convey to the United States, in Congress assembled, all the right of that Commonwealth to the territory northwestward of the river Ohio," a vast region of country; and on the 1st day of March, 1784, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, the then delegates from that State, in open session, executed a deed conveying the said territory to the United States, which was accepted by Congres. The act of the Legislature of Virginia which authorized the cession of the territory, and under which the deed was made, is recited *in extenso* in the deed itself, and shows that the cession was made upon certain conditions, among which are the following:

> That the necessary and reasonable expenses incurred by this State in subduing British posts, or maintaining forts and garrisons within, and for the defense or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this Commonwealth, and another by these two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State which they shall judge to be comprised within the intent and meaning of the act of Congress of the 10th of October, 1780, respecting such expenses. (*Laws of U. S., ed.* 1815, 472.)

In this act the Legislature of Virginia also recognized the services of General George Rogers Clarke and the officers and soldiers under his command at the time Colonel Francis Vigo, the "Spanish merchant," rendered the services and advanced the funds to recover compensation for which this suit is brought; and provided "that a quantity, not exceeding 150,000 acres of land, promised

by this State, shall be allowed and granted to the then Colonel, now General, George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the post of Kaskaskias and St. Vincent were reduced, and to the officers and soldiers that have been since incorporated into the said regiment." (1 Laws of U. S., ed. 1815, 473.) And Congress, having accepted the cession upon the conditions stipulated, upon the 13th of July, 1787, enacted the famous ordinance which excluded slavery from, and established the foundations of civil government in, the great Northwest territory.

Whether the commissioners, provided for by the act of the Virginia Legislature in the above cited act, were appointed, I have not been able to ascertain in the limited investigation I have been able to give the subject, but I am under the impression that this condition of the cession was never carried into effect. A different mode of settlement was adopted. On the 7th of May, 1787, a month prior to the enactment of the ordinance for the government of the Northwest territory, Congress adopted an ordinance entitled "An ordinance for the settling the accounts between the United States and individual States," which, after naming the several States interested, including Virginia, provided as follows:

That it shall be the duty of the said commissioners, respectively, to receive of the States for which they are appointed, all their accounts and vouchers for payments made on account of bounties, pay and depreciation of pay, to the late army of the United States; and for advances to the militia called out under the authority of the United States and actually in their service, and to give descriptive acknowledgments thereof to the States from which they may be received, which accounts and vouchers shall be immediately forwarded to the commissioner of army accounts, whose duty it shall be to examine and pass such as are authorized by the resolves of Congress and supported by proper vouchers; and to state such as may not fall under the above description, together with such remarks as may tend to elucidate the nature of these claims.

and with the interest thereon, to the last day of the year 1789, and shall credit each State for its disbursements and advances on the principles contained in the third section of this act, *with interest to the day aforesaid*, and, having struck the balance due to each State, shall find the aggregate of all the balances, which aggregate shall be apportioned between the States agreeably to the rule hereinafter given, and the difference between such apportionments and the respective balances shall be carried in a new account to the debit or credit of the States respectively, as the case may be. (2 *Laws of the United States, ed.* 1815, 174.)

This act was passed at the second session of the First Congress, after the adoption of the Federal Constitution, and was a ratification of what had been done under the Confederation in recognition of the claims of the several States, growing out of the war of the Revolution and the cession of public territory. The above sections of this act are cited for two purposes: 1. To show that Congress recognized the right of the States to receive interest on these claims; and 2. To show that Colonel Vigo's claim, not having been presented and allowed by the State of Virginia prior to September 24, 1788, was barred from future settlement by the United States, if not by the State of Virginia, so that the settlement of the claim has been virtually prevented by the United States since the enactment of this statute in 1790. By a statute approved January, 1792, the powers of the commissioners, under the act of 1790, were continued until the 1st of July, 1793, but it afforded Colonel Vigo no relief, and I need not pursue the subject further.

From the Twenty-third Congress up to the second session of the Forty-second Congress this claim was constantly pressed upon the attention of the members. In seven instances it has received the favorable action of the House committee to which it was referred, and twice bills reported for its payment have passed that branch of Congress. In the Senate likewise it frequently received favor-

able consideration, and bills were reported providing for its payment. Finally, at the second session of the Forty-second Congress, an act was passed referring the claim to the Court of Claims for adjudication, which was approved June 8, 1872, and which reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, late of Terre Haute, Indiana, for money and supplies furnished the troops under command of General George Rogers Clarke, in the year seventeen hundred and seventy-eight, during the Revolutionary war, be, and the same hereby is, referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and, in making such adjustment and settlement, the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations.

I. In the light of this previous legislation the act of June 8, 1872, is to be considered and construed. The learned Solicitor General, on behalf of the appellant, insists, not only that it is a private act, and to be construed most strongly against the appellees, but that it does not acknowledge the claim to be just. He furthermore asserts that "in order that the Court of Claims should find the claim to be justly due by the United States, it was necessary that some previous statute should have made it so." In this view I cannot concur. The act itself, to say nothing of previous acts of Congress having reference to Revolutionary claims, recognizes the claim as one subsisting against the Government. By it, full jurisdiction is conferred upon the Court of Claims—*not to determine whether the claim is just*, but—"to adjust and settle the same;" *i. e.*, ascertain the amount due, and in making such settlement or adjustment, the Court is required to be "governed by the rules and regulations heretofore adopted

by the United States in the settlement of like cases." And in order that the Court might be able to make such settlement and adjustment, "all the papers and official documents belonging thereto," and then before Congress, were referred to that tribunal. Giving the words "adjust" and "settle" all their ordinary signification, they mean no more nor less than this, that Congress, recognizing the liability of the United States to pay the claim, and waiving the right of the Government to plead the statute of limitations, instructs the Court, upon the papers, to ascertain the amount due, and then to settle it, in the only way a court can settle anything, viz: by the rendition of a judgment. The language used in the act means no more than a merchant or business man would intend when instructing his cashier or clerk to adjust and settle a bill, and in either case the instruction must be regarded as an admission of the justness of the claim. And that it was the purpose of Congress by this enactment to recognize the justice of Colonel Vigo's claim, and treat it as a subsisting liability against the Government, must be evident from the fact that the claim had been barred from prosecution by the act of Congress of August 5, 1790, and could not have been enforced against the United States, even under this special act of 1872, if Congress had not provided that the statute of limitations should be waived or disregarded.

II. It is next objected by the Solicitor General, that it was not a claim against the United States, for the reason that it had never been allowed by the State of Virginia. To this it is a sufficient answer to say, that all the papers in the case, which were before Congress, and which that body referred to the Court of Claims, disclosed the fact that the claim had never been allowed by the State of Virginia, and it chose to waive that pre-requisite. The

act of June 8, 1872, at least, does not require that the fact of the allowance of the claim by the State of Virginia, should be established, and it is, therefore, to be inferred that Congress did not deem the proof of that fact to be essential. The probability is, that for some reason now unknown, the claim never was presented to the State of Virginia, and unless it had been presented and allowed by that State prior to the 24th day of September, 1788, it could not have been allowed at all, as the act of August 5, 1790, excluded claims which had not been allowed by the State prior to the first mentioned date. It was within the province of Congress to dispense with this proof, and that it did dispense with it is clear from the language of the act referring the case to the Court of Claims for adjustment and settlement.

III. The next ground of objection urged against the judgment below, by the learned representative of the Government, goes to the competency of the papers referred to the Court of Claims as evidence. Among the papers is one purporting to be a report of the "Commissioner of Revolutionary Claims of the State of Virginia," dated the 16th of December, 1835, (not January 16, 1835, as stated in the brief of the Solicitor General,) favorable to the claim; and we are told that Congress, in referring this and the other papers to the court, to be used in the adjustment of the claim, "did not give any especial sanction to such papers." "They were sent," says the Solicitor General, "*valeant quantum valeant*, to the court, for the purpose of being scrutinized as to both their *competency* and their *weight* as evidence." And as to the report of the Commissioner, we are told further on, that the court "expressly decline to determine its authenticity! Its character and contents must, therefore, be rejected from the findings of fact." This position, its seems to me, is

nothing more nor less than an objection to the competency of the testimony, which might have been properly made in the court below, and which cannot be raised for the first time in the appellate tribunal. The record does not show that the testimony was objected to in the court below on the ground of its want of authenticity, and that the objection was overruled, and unless the record established this fact, the error of the court would not be apparent. The report of the Commissioner of the State of Virginia is embodied in the Record as a part of the facts found, and if the court below had not been satisfied in some manner that it was what it purported to be, it would hardly have been regarded as evidence of the statement and admission of the claim by that officer. All of the papers were referred to the court, for the reason that they were original ancient writings which bore internal evidence of their own authenticity, and which Congress knew could not now be established by proof, all the parties thereto being dead. Hence they were referred to the court to be used as evidence in the adjustment and settlement of the claim, as the only proof that at this late day could be obtained. Congress having waived all question as to the competency of the proof, by virtually making it testimony, the courts are precluded from overriding the judgment of its members.

IV. The second assignment of error, which goes to the allowance of interest, is the most material, and I proceed now to the consideration of that question.

By the act under which this suit was commenced, full jurisdiction is conferred upon the Court of Claims to settle and adjust this claim, and in making such adjustment and settlement, the court is required to "*be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases*, giving proper considera-

tion to official acts, if any have heretofore been had, in connection with THIS claim." This is the language of the statute, and the question now is, what was the intention and purpose of Congress by its use? That it means something—that it was used for some purpose—none can well deny. The whole act is governed by that portion of it which I have placed in *italics*, and when those words are considered in connection with the subject-matter of the claim, it appears to me that the intention of Congress is clearly apparent. The subject-matter of the claim is a draft for $8,716.00, drawn by General George Rogers Clarke, on December 4, 1779, on Oliver Pollock, the Commercial Agent of the State of Virginia, in New Orleans, in favor of Francis Vigo, in payment of supplies furnished for the army under the command of General Clarke. Here was a definite and ascertained sum, and if it had been the intention of Congress, after the long period of more than ninety years, to pay the descendants of Vigo only the principal sum advanced, can any one believe that it would have employed the phraseology used in the statute to express that intention? If Congress intended that the Court of Claims should adjust and settle the claim upon the basis of allowing only the face of the draft, why not say so in the few words that would have been required to express that purpose, and why require that court, in making the settlement, "to be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases." In the light of the compact with Virginia and other States, and previous legislation, the meaning of this language is clear and explicit. Congress knew that all previous revolutionary claims, whether for services rendered or money advanced, had been paid with interest, from the date the funds were furnished, or the services rendered, and it was the intention of those who

enacted this statute, to confer upon the court below the authority to render like equal and impartial justice to the claimants in this case—the descendants of one, who, though a foreigner, rendered a voluntary service to the troops of Virginia which resulted in untold benefit to this nation. By no other construction can effect be given to the words of the statute, and without this construction the language is meaningless. As I understand the language used, it is the intention of the act that the Court of Claims, in making an adjustment and settlement of the claim, shall do so upon the principles on which similar Revolutionary claims have been allowed and paid, which principles have been established by Congress itself.

Before I proceed further with this inquiry, however, allow me to refer to another provision of this act. I refer to that which provides that the court shall also give "proper consideration to official acts, if any have heretofore been had, in connection with *this* claim." It is difficult, perhaps, to comprehend what is intended by this provision of the statute. Certain it is, there have been no "official acts" in reference to the claim, except before Congress, as above indicated. Without legislative action there was no power in the executive departments to either allow or to disallow the claim. My own conviction is, that the clause was placed in the act out of abundant caution, so that if any action had been had relative to the case by any of the departments of the Government the court might be authorized to take such action into consideration. It in no way, however, qualifies the previous words, or limits the power of the court in the settlement and adjustment of the claim. And this disposes of this provision of the statute.

What, then, are "the rules and regulations heretofore adopted by the United States in the settlement" of cases

like the one at bar, by which the court below was required to be governed in the adjustment and settlement thereof? As I have shown above, the first law enacted by Congress, making provision for the payment of the States for claims growing out of the war of the Revolution, the act of May 7, 1787, provided that the accounts should be adjusted on *uniform and equitable* principles, and the subsequent statute of August 5, 1790, enacted after the adoption of our present National Constitution, adopted the same basis of settlement. These and the subsequent legislation of Congress must be the "rules and regulations heretofore adopted," to which reference is made in the act of 1872, and by which the court is to be governed in the adjustment and settlement of the claim.

What, then, are the equitable principles applicable to this case? It appears from the record that Colonel Vigo rendered important services to the American cause, not merely by voluntarily furnishing supplies to Colonel Clarke and his command out of his own stores, but by becoming paymaster, and inducing others to furnish such supplies, and to whom he advanced his own means in payment; that the largest draft drawn in his favor by Clarke, on the agent of the State of Virginia, was protested, and remains unpaid to this day; that the assistance Vigo rendered Clarke, and for which he has never been compensated, contributed greatly to his subsequent poverty; and that by reason of sickness or other causes he was prevented from presenting his claim to the State of Virginia, and having it allowed and paid in time to be included in the settlement between that State and the General Government. It is further apparent that this claim is a debt due by the State of Virginia to Vigo prior to the cession of the Northwest Territory, and is one of the claims the United States solemnly assumed to pay when the cession

of that vast region was made. It is, then, an obligation against the Government of the most sacred nature; and that it has not been liquidated long before this is the fault neither of Vigo nor of his heirs and legal representatives. In 1790 Congress interposed a bar to the payment of the claim, by providing in the act above cited, "*nor shall the claim of any citizen be admitted as a charge against the United States, in the account of any State, unless the claim was allowed by such State before the 24th day of September*, 1788;" and until that bar was removed by the enactment of the statute of 1872, the successors of Vigo were without any remedy.

As the testimony in the case establishes, almost beyond controversy, that Vigo received from Colonel Clarke, for supplies furnished or moneys advanced, for the use of his troops, this draft for $8,716, and that the same has never been paid either by the State of Virginia or the United States, the only question seems to be, what are these claimants, as the representatives of Colonel Vigo, entitled to recover? And the answer naturally is, the amount of the draft, with legal interest from its date up to the time of payment. This is the rule of damages in all such cases, and is the rule established by Congress itself with reference to these Revolutionary claims. In the act of 1787, heretofore cited, Congress provided that on the accounts of the States for advances and disbursements made for the use of the United States, "*interest shall be allowed at the rate of six per cent. per annum*," agreeably to the resolves of Congress, (1 Laws of the U. S., ed. 1815, 663;) and the fifth section of the act of 1790, in like manner, provided that the balances struck between the States and the United States should also bear interest, (2 Laws of U. S., ed. 1815, 174.) And this rule has been consistently adhered to ever since in all cases of individual Revolutionary

claims allowed by Congress. The statutes are full of such cases, and in support of this proposition I shall here refer to a few of the many private acts which have been enacted by Congress for the relief of those who rendered services to the nation in its struggle for independence.

On the 28th of September, 1785, Congress resolved that the board of treasury take order for paying to Return J. Meigs, late a colonel in the service of the United States, and to the legal representatives of Christopher Greene, deceased, late a colonel in said service, the sum of two hundred dollars, the same having been expended for the use and comfort of the unfortunate prisoners in Quebec in the year 1776. And the Second Congress, at its second session, passed an act approved January 14, 1793, which provided that *lawful interest*, from the 16th of May, 1776, shall be allowed on the sum of $200 ordered to be paid to Return J. Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the United States, in Congress assembled, on the 28th of September, 1785. This is the first act I have been able to find allowing interest on individual claims.—(2 *Laws of U. S., ed.* 1815, 327.)

In 1794 an act was passed, approved May 31, which provided for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt and till his return, and for services in the business of Indian treaties, and "*allowed interest on the balance* found to be due him."—(2 *Laws of U. S., ed.* 1815, 411.)

In 1795 an act was passed, approved February 27, which authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly authorized attorney, certificates for the amount of $254 43, *bearing interest at six per cent.* from the 1st of July, 1783, being for his services in the corps of sappers and miners during the late war. —(2 *Laws of U. S., ed.* 1815, 479.)

In 1798 an act, approved January 23, directed the Secretary of the Treasury to pay General Kosciusko *an interest at the rate of six per cent. per annum* on the sum of $12,280 54, the amount of a certificate due to him from the United States from the first of January, 1793, to the 31st of December, 1797.—(3 *Laws of U. S., ed.* 1815, 25.)

In 1802 it was enacted by Congress, (approved May 3,) that there be paid Fulwar Skipwith the sum of $4,550, *advanced by him for the use of the United States, with interest at the rate of six per cent. per annum* from the 1st of November, 1795, at which time the advance was made.—(3 *Laws of U. S., ed.* 1815, 518.)

In 1804 an act was passed, approved January 14, authorizing the proper accounting officers to liquidate the claim of John Cowles, owner of the ship Grand Turk, heretofore employed in the service of the United States, for the detention of the said ship at Gibraltar from the 10th of May to the 4th of July, 1801, inclusive, and that he be allowed demurrage at the rate stipulated in the charter party, *together with the interest thereon.*—(3 *Laws of U. S., ed.* 1815, 566.)

In 1807, March 3, Congress passed and the President approved an act providing for a settlement of the accounts of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, *with interest until paid.*—(4 Laws of U. S, ed. 1815, 99.) This Oliver Pollock, it will be remembered, was the agent of the State of Virginia on whom the drafts of General Clarke in favor of Colonel Vigo were drawn, so that he appears to have been at the same time, or about the same time, the commercial representative of the United States, as well as that of the State of Virginia. And on the same day and year, it was enacted that the accounting officers of the Treasury be author-

ized to settle the account of Stephen Sayre, as secretary of legation at the Court of Berlin, in the year 1777, *with interest on the whole sum until paid.*—(*Ib.*, 100.)

So, in 1810, a similar act was passed and approved in relation to the account of Moses Young, as secretary of legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, *with interest thereon*, should be paid.—(*Ib.*, 264.)

In 1812, it was provided by act of Congress, approved January 10, that there be paid to John Burnham the sum of $126 72, *and the interest on the same since the 30th of May*, 1796, which, in addition to the sum allowed him by the act of that date, is to be considered as a reimbursement of the money advanced by him for his ransom from captivity in Algiers.—(*Ib.*, 367.) And in July of the same year an act for the relief of Anna Young, required the War Department to settle the account of Colonel John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half pay, *and interest thereon.*—(*Ib.*, 461.)

In 1813 Congress passed an act for the relief of John Dixon and John Murray, which was approved February 25th of that year. The first section provided that there be paid to John Dixon the sum of $329 81, *with six per centum per annum interest thereon* from the 1st of January, 1785, "being the amount of a final-settlement certificate, No. 596, issued by Andrew Dunscomb, late Commissioner of Accounts for the State of Virginia, on the 23d of December, 1786, to Lucy Dixon, who transferred the same to John Dixon." The second section required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan certificates for $1,000, *with interest from the 29th of March*, 1782, issued in the

name of said Murray, signed Francis Hopkinson, treasurer of loans.—(4 Laws of U. S., ed. 1815, 505.) It will be seen that the first of these claims is one from the State of Virginia, and that it is precisely analogous to the case at bar, except that it had been allowed by the Commissioner of Accounts of that State.

On the 13th of April, 1814, an act was passed and approved, directing the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settlement certificate for $183 23, dated February 1, 1785, and *bearing interest* from the 1st of January, 1783, issued to said Brevard by John Pierce, commissioner for settling accounts of the army.—(4 *Laws of U. S., ed.* 1815, 683.)

In 1816 an act, approved April 26, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the 18th of August, 1784, for $480 87, by John Pierce, commissioner for settling army accounts, *bearing interest from the 1st of January*, 1782.—(6 *Laws of U. S.*, 97.)

On the 14th of April, 1818, an act was passed and approved which authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an act approved the 11th of May, 1812, and "to allow the said John Thompson *interest at six per centum per annum* from the 4th of March, 1787, to the 20th of May, 1812, on the sum which was found due to him, and paid under the act aforesaid." The act referred to in this statute will be found in 4 Laws of the U. S., ed. 1815, 429. This is a case where a settlement was reopened, after payment, merely to allow the claimant interest.—(6 *Laws of U. S.*, 287.)

In 1820 Congress passed an act, approved May 11, in

which the proper officers of the Treasury were authorized to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the 1st of February, 1785 for his services as a lieutenant in the army of the United States during the Revolutionary war, *together with interest on the said certificates, at the rate of six per centum per annum, from the times they bore interest*, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid.—(6 Laws of U. S., 510.) And at the same session an act was approved, May 15, which required that there be paid to Thomas Seiper the specie value of four loan-office certificates, issued to him by the Commissioner of Loans for the State of Pennsylvania, on the 27th of February, 1779, for one thousand dollars each; and also the specie value of two loan-certificates, issued to him by the said Commissioner, on the 2d day of March, 1779, for one thousand dollars each, *with interest at six per centum annually.*—(*Ib.*, 537.)

In 1822 an act, approved May 7, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of $123 30, being the amount of a final-settlement certificate, *with interest, at the rate of six per centum per annum, from the 1st day of January*, 1788. So, at the same session, a similar act was passed for the relief of John Curte.—(7 *Laws of the U. S.*, 83, 84.)

In 1823 a similar law was passed for the benefit of the legal representatives of James McClung.—(*Ib.*, 195.) And in 1824 an act, approved May 5, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of $6,215, "*being for interest on moneys advanced by him for the use of the United States*, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department, for superintending the making of army clothing, and for issuing the pub-

lic supplies."—(*Ib.*, 244.) In 1825, two such acts were passed.—(*Ib.*, 371 and 414.) And in 1826, a similar act was enacted for the relief of the heirs of John W. Baylor.—(*Ib.*, 705.) And in 1827, the proper accounting officers of the Treasury were authorized to pay to B. J. V. Valkenburg the sum of $597 24, "being the amount of fourteen indents of interest, *with interest* thereon from the 1st of January, 1791, to the 31st of December, 1826." Here is a case in which the Government paid interest upon interest. (*Ib.*, 599.)

In 1828 an act, approved May 19 provided that there be paid to the legal representatives of Patience Gordon the sum of $145 15, *with interest at six per centum per annum* from the 1st of January, 1788, it being the specie value of a certificate issued to her by the Commissioner of Loans of the State of New Jersey, dated April 7, 1778, (8 Laws of U. S., 60.) On the 24th of May, in the same year, a similar act was passed in favor of Ward & Brothers, on a final-settlement certificate, (*Ib.*, 150,) except that this act did not provide for the payment of the interest; and in 1830, two years afterward, Congress passed another act appropriating money to pay the legal interest due on said certificate, from the date thereof, viz: October 23, 1786.—(*Ib.*, 386.)

In 1830 an act was passed, which was approved May 29, which required the Treasury Department "to settle the accounts of Benjamin Wells, as Deputy Commissary of Issues at the magazine at Monster Mills, in Pennsylvania, under John Irvine, Deputy Commissary General of the army of the United States in said State in the Revolutionary war;" and that "they credit him with the sum of $575 04, as payable February 9, 1779, and $326 67, payable July 22, 1780, in the same manner, and *with such interest*, as if these sums, with their interest from the times

respectively as aforesaid, had been subscribed to the loan of the United States," &c.—(*Ib.*, 376.) In 1831 a similar statute was enacted for the relief of Lucien Harper.—(*Ib.*, 434.)

In 1831, an act for the relief of Richard G. Morris provided for the payment to him of two certificates issued to him by Timothy Pickering, Quartermaster General, *with interest thereon* from the 1st of September, 1781.—(*Ib.*, 557.)

On the 4th of July, 1832, two acts of this character were passed and approved. One for the relief of Aaron Snow, a Revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late Commissioner of Army Accounts, and dated in 1784, *with interest thereon*, (*Ib.*, 651,) and the other act provided for a similar payment to W. P. Gibbs of a final-settlement certificate dated January 30, 1784, *with interest at six per cent. from the 1st of January*, 1783, up to the passage of the act.—(*Ib.*, 652.) This act, it will be seen, went behind the final certificate and provided for the payment of interest anterior to its date. In the same year two similar acts were passed—one for the relief of Gertrude Gates (*Ib.*, 728) and one for the relief of John Peck.—(*Ib.*, 734.) See also case of John Laurens.—(*Ib.*, 718.)

In 1833 four such statutes were enacted. The first provided for the payment to Archibald Watt of three Treasury certificates, dated February 19, 1779, *with interest on the specie value, &c.*—(*Ib.*, 775.) The second is an act for the relief of Eleanor Courts, and authorizes the proper officers to pay to her, as the widow and legal representative of Richard H. Courts, a surgeon's mate in the Revolutionary army, the account of said Courts for twenty two months' service and rations as such surgeon's mate, *together with such interest thereon as would now be due*, if a certificate of the amount of said account had been issued,

&c.—(*Ib.*, 845.) The other two acts authorized settlements on open accounts, with the payment of interest, and are precisely similar to the case of Courts, both of the parties having been officers in the army of the Revolution, and the bills making provision for the payment of services rendered the nation.—(*Ib.*, 846, 847.) These two acts establish the proposition that the payment of interest on claims for Revolutionary services was not confined to cases in which certificates of final settlement had been issued, but was allowed on open accounts. And in the case of Gibbs, above cited, it will be remembered, Congress went behind the certificate, and allowed interest anterior to its date.

In 1834 a number of laws were enacted providing for the payment of this class of claims. The first was approved June 19th, and directed the proper accounting officers "to *revise* the settlement of the account of Dr. John Berrian, commissary of the hospital department in the Revolutionary army, made by Benjamin Walker, commissioner of accounts of the hospital, clothing, and marine departments of said army, and to allow the heirs or legal representatives of said Berrian the compensation fixed by the resolution of Congress of February 6, 1778, as specie," &c.; "and that on said settlement, if any balance is found due from the United States, the same be paid, *with the interest now due*, to the heirs or legal representatives of the said Berrian, as though a certificate had regularly issued therefor at the time it became due," &c.—(9 Laws of U. S., 43.) The second was approved June 27, and directed to be paid to the legal representatives of Christian Ish $147 10, *together with interest thereon*, as if a certificate for that amount had been funded under the act of August 4, 1790, in full satisfaction of a certificate issued by George Ross, deputy quartermaster general, to

the said Ish on the 29th of February, 1780.—(*Ib.*, 61.) The three next acts are substantially similar, and provide for the payment of certain loan and final-settlement certificates, with *interest*.—(*Ib.*, 77, 93, 96, 97.) On the 30th of June, in the same year, an act was approved for the relief of John Peck, which provided for the payment to him of "*the interest which had accrued on three final-settlement certificates*," the payment of which had been previously provided for, (see 8 Laws of U. S., 734,) "*from the several periods at which interest had become due and payable thereon* to the 1st of January, 1788."—(*Ib.*, 152.) On the same day another act became a law, which provided for the settlement of the account of Captain George Hurlburt, a captain of the Revolutionary army, and allowing him five years' full pay of a captain of dragoons, as a commutation for the half pay for life.—(*Ib.*, 163.) On the settlement provided for under this act final-settlement certificates were issued to Captain Hurlburt, and two years after, July 2, 1836, Congress passed a special statute *allowing interest on the account of said Hurlburt*.—(*Ib.*, 521.)

These citations from the statutes, commencing with the very organization of the Government, and running up to the year 1857, establish the proposition I have heretofore stated, that on claims for money advanced, supplies furnished, and services rendered to the Revolutionary cause, legal interest was allowed from the date the funds were advanced, the supplies furnished, or the services rendered. This has been the uniform policy of the Government, as defined by Congress and carried into effect by the executive departments. And this policy has been steadily adhered to by later Congresses. Without going through all the statutes to establish this assertion, I beg leave to cite two acts of comparatively modern date: On the 3d of March, 1847, an act was approved for the relief of the legal

representatives of Simon Spaulding, which provided that there be paid to the party named in the act, the amount of a final certificate issued to Spaulding for the sum of $760, dated July 28, 1783, *together with interest thereon from the 22d of March*, 1783.—(6 Stat. at Large, 46.) And on the 18th of August, 1856, an act was approved which directed the Secretary of the Treasury to pay to Thomas H. Baird, administrator of the estate of Absalom Baird, a commissioned surgeon in the army of the Revolution, the sum of $10,074 84, *with interest thereon from the 27th day of October*, 1805, *to the 1st day of June*, 1856, and providing for the deduction of a previous payment made to said Spaulding. There may be, and doubtless are, later acts of this character, but, deeming the foregoing citations sufficient to establish the principle, I have not thought it necessary to pursue the investigation further.

It is proper to state here that many of the acts cited above, for the payment of loan-office and final-settlement certificates were rendered necessary from the fact that the certificates had been lost or destroyed. Where such was not the case, however, the payment of these evidences of the Government indebtedness was provided for by a general law, and which continued in force up to the year 1836, if not later. In addition to the bar in the act of 1790, which I have heretofore cited, and which precluded Colonel Vigo from proving up his claim before the authorities of Virginia, on the 12th of June, 1798, an act was passed, entitled "An act respecting loan-office and final-settlement certificates, indents of interest, and the unfunded registered debt credited on the books of the Treasury," (3 Laws of U. S., ed. 1815, 56,) which barred from settlement and allowance the said evidences of indebtedness. This act remained in force until the 13th of April, 1818, when an act was approved which suspended for two years from its date,

so much of the statute of 1798 as prohibited the settlement and allowance of said claims, and provided for their payment. The second section of this act reads as follows:

SEC. 2. *And be it enacted*, That all certificates commonly called loan-office certificates, countersigned by the loan officers of the States respectively, final-settlement certificates, and indents of interest, which, at the time of passing this act, shall be outstanding, may be presented at the Treasury, and upon the same being liquidated and adjusted, shall be paid to the respective holders of the same, *with interest at six per cent. from the date of the last payment of interest* as indorsed on said certificates —(7 *Laws of U. S., ed.* 1815, 287.)

On the 7th of May, 1822, the act of 1798 was again "suspended for the term of two years from and after the passing of this act, and from thence until the end of the next session of Congress," with a like provision for the payment of outstanding certificates of the description named in the act of 1798, *with interest at six per cent.*—(7 Laws of U. S., ed. 1815, 85.) And on the 14th of July, 1832, an act was approved extending the statute of May 7, 1822, "for the term of four years from and after the passing of this act, and from thence to the end of the next session of Congress thereafter." Thus Congress has repeatedly and constantly recognized the obligation of the Government, from its earliest period up to a late date, to pay interest on claims growing out of our Revolutionary struggle, and the cases cited are the "official acts," which this court, in determining the case at bar, is required by the act of 1872, under which the suit is brought, to give "proper consideration." And under these "official acts," in connection with this claim, which constitute "the rules and regulations heretofore adopted," and by which this court is required to be governed, the claimants may reasonably insist upon their right to legal interest from December 4, 1779, the date of the draft to Vigo, for $8,716, up to the time of the rendition of the judgment.

But, aside from the contract made with the several States, for which ample consideration was paid by the cession of territory, or otherwise, it may be stated as a general proposition, that it has been the uniform practice of the Government, sanctioned by numerous statutes, where money has been *advanced* for the United States, or where drafts drawn by its disbursing officers have been protested for non-payment, upon the settlement of such claims to allow interest from the time of such advances, or the non-payment of such drafts. There are a large number of special statutes making provision for such settlements, and the payment of the accruing interest, to a few of which I shall now refer.

On the 14th of July, 1832, an act was approved, which provided that there be paid to the widow and children of E. T. Warren, in equal proportions, the principal sum of $100, *with interest thereon at the rate of six per centum per annum* from the 9th of September, 1820; and also the further sum of $356 53, *with interest thereon at the rate of six per centum per annum from the 12th day of December*, 1826, *the said several sums having been illegally demanded and received by the United States of the said E. T. Warren*, &c.—(8 Laws of U. S., 717.) In the same day and year another act was passed, refunding to Hartwell Vick a certain sum of money, *with interest thereon at the rate of six per centum per annum from the 23d of May*, 1818, that sum having been paid by him on the day aforesaid as the purchase money of certain land, to which it appeared subsequently the Government had no title.—(*Ib.*, 732.)

On the 27th of February, 1833, an act was approved which required the proper officers to pay to Riddle, Beckle, Headington & Co. the sum of $216 28, *with interest from the 26th of May*, 1813, in full of the damages and interest on a protested bill of exchange drawn by B. Shaum-

burg, a deputy quartermaster general of the United States, in favor of said parties, dated at New Orleans on the 29th of March, 1812, and paid on the 4th of September, 1813, it being the interest and damages which accumulated on said bill between those dates.—(8 *Laws of U. S.*, 774.)

On the 7th of July, 1838, it was enacted that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly consular agent of the United States at Cadiz, in Spain, and to allow him, among other items, *the interest on the money advanced*, under agreement with the Minister of the United States in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States, *from the time the advances respectively were made* to the time at which the said advances were reimbursed.—(9 *Laws of U. S.*, 919.)

On the 3d of August, 1846, an act was passed and approved, which provided that there be refunded, to the representatives of the persons named in the act, certain sums of money, one item being $200 paid by Felix St. Vrain to an officer of the Government, with which St. Vrain had never been credited, *with six per cent. interest from the 13th day of December*, 1839, that being the date when the parties named, as sureties for St. Vrain, had satisfied an execution against them in favor of the United States.—(6 U. S. Stat. at Large, 10.) And on the 10th of August, of the same year, the Secretary of the Treasury was authorized to pay to Abraham Horbach the sum of five thousand dollars, *with lawful interest from the 1st of January*, 1836, being the amount of a draft drawn by James Reeside on the Post Office Department, dated April 18, 1835, payable on the 1st of January, 1836, and accepted by the treasurer of the Post Office Department, which said draft was indorsed by said Abraham Hor-

bach at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and, at maturity, said draft was protested for non-payment, and said Horbach became liable to pay, in consequence of his indorsement, and did pay the full amount of said draft.—(*Ib.*, 29.)

On the 5th of February, 1859, the Secretary of War was authorized to pay to Thomas Laurent, as surviving partner, the sum of $15,000, *with interest at the rate of six per cent.* yearly, from the 11th of November, 1847, it being the amount paid by the firm on that day to Major General Winfield Scott, in the city of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities.—(11 *Stat. at Large*, 558.)

These, and many other acts which might be cited, establish the proposition stated above, but the principle is so well settled and so familiar to the court, that it would be a work of supererogation to pursue it further.

It may be contended, however, that this class of Revolutionary claims are not entitled to bear interest until after the same have been settled, and a certificate of final settlement issued. Many of the statutes cited above disprove this position, and show that Congress, when providing for the settlement for such claims, undeviatingly authorized the payment of interest from the date of the rendition of the services or the furnishing of the supplies. To still further eludicate this point, I refer to the following cases:

By the act approved July 14, 1832, the proper officers of the Treasury were required to settle and adjust the account of the heirs of Thomas Davenport, and to allow them five years' full pay for his services as a captain in the Revolutionary war, *with such interest thereon as the party would have been entitled to if a final-settlement certificate*

had been issued for the amount of his commutation.—(8 Laws of U. S., 724.) On the same day two precisely similar laws were enacted for the relief of John I. Jacobs, and for the relief of the heirs of Colonel Robert H. Harrison. —(*Ib.*, 722, 735.)

These citations from the statutes establish the proposition that in all Revolutionary claims, and on all claims for money advanced for the use of the Government, it has been the uniform practice of Congress, in consonance with the compact with the several States which ceded their territory to the General Government, to allow interest upon such claims from the date the money was advanced, or the services rendered, up to the day of settlement and payment, and make it clear that it was the intention of Congress, by the language used in the special act of 1872, to confer upon the Court of Claims the power to allow, in the settlement of this claim, such interest as had previously been allowed other Revolutionary claimants.

It is true that the seventh section of the act entitled "An act to amend 'An act to establish a court for the investigation of claims against the United States,' approved February 24, 1855," approved March 3, 1863, provides that "no interest shall be allowed on any claim up to the time of the rendition of the judgment by said Court of Claims, unless upon a contract expressly stipulating for the payment of interest;" and it may be insisted on the argument of this case, that this provision of the statute precludes the allowance of the interest which we claim. To this position, if assumed, there are two answers: 1. The claim itself *does* arise out of a contract which expressly stipulates for the payment of interest. As I have shown in the forepart of this argument, Congress, when it invited the States to cede to the General Government the public territory which these States claimed to own in the

West, promised to pay the expenses of the acquisition and defense of such territory incurred by each State; and Virginia, in her deed of cession of the Northwest Territory, made it a condition of the cession that these expenses should be reimbursed, to which Congress assented; and in pursuance of the promises thus made on the part of the nation, the act of May 7, 1787, was passed, which expressly provided for the payment of six per centum interest per annum on the claims then existing, growing out of such acquisition and defense. No more solemn contract was ever made by any nation; none was ever entered into for which there was a more ample and valuable consideration; and none was ever more binding upon the honor of the nation. The various resolves of Congress, the several deeds of cession, and the laws enacted in pursuance thereof, are but the parts of *one* great contract, and are to be taken and considered together as a whole, which has been faithfully observed, so far, I believe, by the several parties to it. Shall it be disregarded at this late day, and in this case? This question I leave for this Court to answer.

The second answer to the proposition, that we are not entitled to interest, is that the law of 1872, under which this suit is brought, is the latest expression of the legislative will upon this subject, and must prevail. That act, as I have already shown, contemplates the payment of interest; or, in other words, it requires this court, in the adjustment and settlement of the claim, to be "*governed* by the rules and regulations heretofore adopted by the United States in the settlement of like cases," and I have conclusively demonstrated that the "rules and regulations heretofore adopted," and the "official acts" which have been had, have recognized and established the right of the claimants in like cases to the interest upon which we insist in this case. Need I cite authorities to prove that

where two statutes are conflicting, the one last enacted must be regarded as repealing by implication the former one, so far as they are inconsistent? No principle of the law is better settled, and none is oftener called into requisition. In the case of the *United States* vs. *Tynen*, 11 Wallace, 92, the Supreme Court says: "When there are two acts on the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." This is the latest decision of the Supreme Court upon this subject, and is supported by the following authorities, among many others which might be cited:

Davies v. *Fairbarn*, 3 Howard, 636.
Bartlett v. *King*, 12 Mass., 537.
Commonwealth v. *Cooley*, 10 Pick., 37.
Pierpoint v. *Crouch*, 10 California, 315.
Norris v. *Crocker*, 13 Howard, 429.
Sedgw. on Statute Law, 126.

Now, so much of the proviso in the tenth section of the act of 1863 as prohibits the allowance of interest on the claim now before the court, (if the case comes within the class of claims mentioned in that proviso,) is utterly repugnant to the act of 1872, under which the court is now acting, which requires the court to be "*governed*" in making its adjustment, "by the rules and regulations heretofore adopted by the United States in the settlement of like cases," for those rules and regulations, and the official acts referred to in the statute, as I have conclusively

shown, do allow interest in all such cases. The language in the act of 1872, just quoted, must mean something, and it can only bear the construction here given to it. This act, then, so far as this case is concerned, repeals by implication the prohibition of the allowance of interest in the former statute, and the position assumed must be overruled, leaving the claimants to receive from the hands of this Court, the same measure of justice that has been heretofore meted out by Congress to other claimants similarly situated.

But here I am met by two authorities, to which I will now refer. The first is the case of *Gordon* v. *The United States*, (7 Wallace, 188,) and the other is that *distinguished* jurist, the First Comptroller of the Treasury. As to the case of Gordon, it is sufficient to say that there is no analogy between it and the case at bar. I concede that this court does not ordinarily sanction the allowance of interest on claims against the Government; but where the contract provides for the payment of interest, or the law authorizes it, this court is bound, equally with any other court, to construe the contract according to its terms, and to obey and enforce the requisitions of the law. The *sage* opinion of the First Comptroller is to the effect "that in the adjustment and settlement of claims for services rendered by officers of the United States during the Revolutionary war, or for supplies furnished the troops in that war, the Rules and Regulations heretofore adopted by the United States prohibits the payment of interest, *unless authority to pay is expressly given by act of Congress in special cases.*" The court is then informed by the Solicitor General, that he is referred by the First Comptroller to the case of the heirs of John Campbell, in regard to a claim for interest upon a Revolutionary debt, decided in 1853, under an act which made it the duty of

the Treasury Department to credit and adjust the claim on the principles of equity and justice, and which the then First Comptroller determined against the applicants. The opinion in this case is said to be very elaborate, and the Solicitor General advises us that this decision "is regarded in the office of the Comptroller as a sort of Treasury organic law." And from this statement and the opinion of the First Comptroller, cited above, and manufactured for this case, and to enlighten the Supreme Court, the learned Solicitor General concludes that the "Rules and Regulations heretofore adopted by the United States in the settlement of like cases," mentioned in the act of 1872, "refers to the action of the Departments under general principles governing like cases, and not to the exceptional dealing evidenced by special acts of Congress."

To all this there are two answers. We insist first, that the act of Congress under which this suit was brought intended to authorize the Court of Claims, in the settlement and adjustment of the claim, to allow interest on the sum advanced by the claimants' ancestor; that it was the purpose of Congress to treat this case as other Revolutionary cases had been treated; and that by no other construction can effect be given to the words, "and in making such adjustment and settlement, the said court shall be governed by the Rules and Regulations heretofore adopted by the United States in the settlement of like cases." If Congress had intended that only the face of the draft should be paid, it could have said so in much fewer words; in fact, it would most probably have made a direct appropriation for the payment of that sum. Congress was well aware of previous legislation in reference to this class of claims, and the only reasonable inference than can be drawn from the language of the act is, that it intended to

place this case in the attitude of similar Revolutionary claims, and have it settled in accordance with the terms of the compact between the United States and the State of Virginia, which provided for the payment of both principal and interest. Giving the act of 1872 the construction for which I contend, there is no conflict between the decision of the Court of Claims and the opinion of the First Comptroller, upon which the learned Solicitor General relies, as I insist that the authority to pay interest in this case "is expressly given by the act of Congress." The second answer is, that the decisions of the First Comptroller, even though rendered by so competent an officer as Elisha Whittlesey, are not precedents which this court is required to follow, and have no validity outside of that office. The nature of the case of Campbell is not stated, except that it was "a claim for interest upon a Revolutionary debt," but in view of the many acts of Congress, which I have quoted above, not only allowing interest, but opening cases which had been previously settled, for the sole purpose of giving the claimants interest which had been kept from them by the departments, to say nothing of the original compact with the several States, which provided for the payment of six per centum interest, I may say, without hesitation, that the decision in the Campbell case is clearly erroneous, and in violation of all the legislation of the country with respect to Revolutionary claims. However much the decision in the case may be "regarded in the office of the Comptroller as a sort of organic law," it cannot be regarded as binding, in face of the expressed will of Congress and the whole scope of legislation governing "like cases."

I feel that I ought not to close this argument without some reference to the character of Colonel Francis Vigo, of whom these claimants are the legal heirs and represen-

tatives. The original papers on file on the case show that he possessed the esteem and confidence of General Knox, the then Secretary of War, General Anthony Wayne, and General William H. Harrison, who was President of the United States, and that Vigo, subsequently to the aid tendered to General George Rogers Clarke, performed valuable services to this country. As late as the year 1811, General Clarke wrote to him in the warmest terms of friendship, and favorable mention is made of the services he rendered his adopted country by Judge Marshall, in his life of Washington, (vol. 3, 566,) and by General Clarke himself in his letter to Thomas Jefferson. (1 Jefferson's Works, 453.) Judge Bennett, in his "Notes on the Northwestern Territory," 77–80, in speaking of General Clarke's expedition and services in that territory, and of his demand on the people for aid for the support of his troops, makes mention of Colonel Vigo as follows:

> Colonel Vigo was one of the persons who voluntarily surrendered his property for the support of the regiment, and received a draft on Virginia for the amount, which was dishonored. That noble-hearted man lived many years afterward in comparative poverty, and died almost a pauper, holding the same protested draft in his possession, on which there must have been due at his death at least twenty thousand dollars. Since his death, the government of Virginia has acknowledged the justice of the claim by a solemn act of the Legislature, and has furnished evidence to prove that it is one of the liabilities assumed by the General Government in consideration of the act of cession; but there it rests, no part of the debt having been paid.

There being no error apparent in the record of which the appellant can take advantage, it follows that the judgment of the Court of Claims must be affirmed.

Respectfully submitted.

W. PENN. CLARKE.
Attorney for Appellees.

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